

DRAFT ENVIRONMENTAL ASSESSMENT

FOR THE

HORSE CREEK COMPLEX CONSERVATION EASEMENT



DECEMBER 2017



***Montana Fish,
Wildlife & Parks***

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Chapter 1.0: Purpose of and Need for Action

1.1 Proposed Action

The Montana Department of Fish, Wildlife and Parks (hereafter, “FWP” or “the Department”) proposes to purchase two separate and distinct but overlapping perpetual conservation easements totaling 15,376.36 acres in Dawson and Wibaux Counties, Montana. The reason for two separate conservation easements, rather than one single easement, is to take advantage of available funding sources, which have somewhat unique requirements. The first conservation easement, the Horse Creek Complex 1 Conservation Easement (“ALE CE”), will utilize primarily Natural Resources Conservation Service (NRCS) Agricultural Lands Easements (ALE) funding for 10,536.49 acres. The ALE program does not fit well for areas under tillage agriculture. Therefore, the ALE CE does not include cultivated land. The second conservation easement, The Horse Creek Complex 2 Conservation Easement (“FWP CE”), will utilize Habitat Montana dollars to fund the remaining acres, but will encumber the entire property to ensure that the Land remains in a single unit in the future. Both conservation easements would be administered by FWP. See Chapter 2, section 2.1 below for further details on anticipated funding sources. The easements can be viewed in their entirety, including maps and legal descriptions of easement land, in Attachment A. The two proposed easements will collectively be referred to as the “Horse Creek Complex Conservation Easement”, “Conservation Easement”, “Land”, or “Ranch” herein.

Conservation easements are voluntary binding agreements, between a landowner, and in this case, FWP. Through the conservation easement, FWP pays that landowner and, in exchange, the landowner agrees to limit certain uses of the property in order to protect high-priority wildlife habitat and conservation values. The conservation easement deeds are recorded and run with the land in perpetuity. Developing and implementing conservation easements requires an ongoing partnership between FWP and willing private landowners with the primary intent of conserving important native wildlife habitats and providing public access, while keeping the land in private ownership. The proposed Horse Creek Complex Conservation Easement would encompass a diversity of Eastern Montana habitat types, protecting conservation values in perpetuity. The Land transitions from rolling hardwood draw dominated grasslands on the north, to badlands and finally to extensive big sage dominated grasslands on the south. The proposed Horse Creek Complex Conservation Easement is located in FWP Administrative Region 7, Deer/Elk Hunting District 703, immediately south of Hodges, MT, 10 miles southwest of Wibaux, MT, or 20 miles southeast of Glendive, MT, in Wibaux and Dawson Counties (Figures 1 and 2).



Figure 1. The proposed Conservation Easement is located in Eastern Montana immediately south of the town of Hodges.

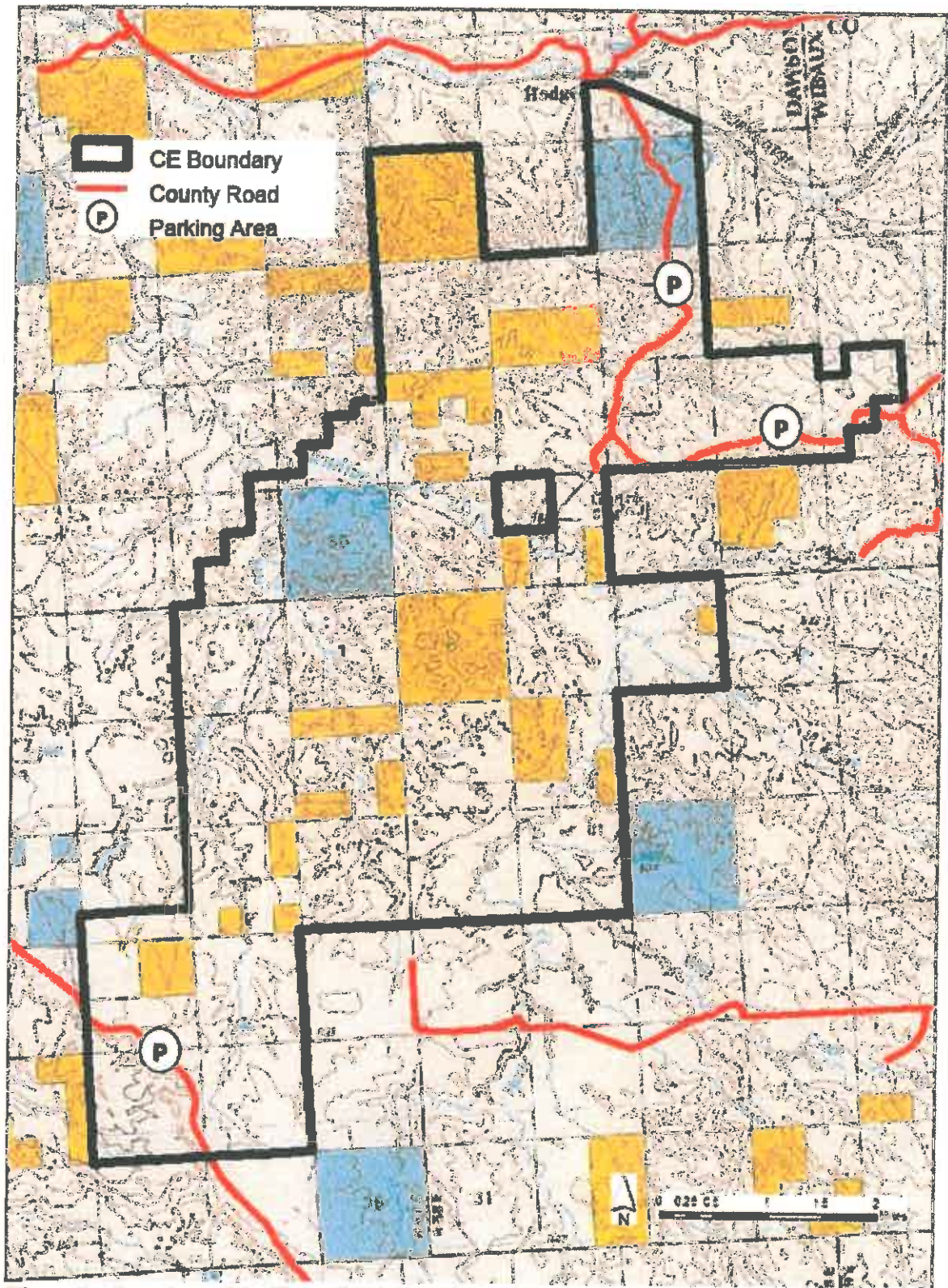


Figure 2. Boundary of the Horse Creek Complex and associated public land leases (black outline). While the easement would only encumber deeded land (white), DNRC land (blue) and BLM land (gold) leased by the Landowner are shown to demonstrate the footprint of the project.

1.2 Need for the Action

The proposed Horse Creek Complex Conservation Easement provides excellent year-round habitat for mule deer, with more than 85% of the proposed easement considered high-quality mule deer winter range. The Land is within sage grouse general range and contains intact Wyoming big sagebrush grasslands that provide nesting and winter cover for sage grouse and habitat for other sagebrush associated species. The southern portion of the proposed Conservation Easement is good year-round antelope range. The northern portion of the proposed Conservation Easement has extensive green ash dominated hardwood draws and provides excellent habitat for sharp-tailed grouse, songbirds, mule deer, and white-tailed deer. Elk occasionally occur on the Land. The proposed Conservation Easement supports numerous non-game species, and is within the range of 39 Species of Greatest Conservation Need identified in the 2015 FWP State Wildlife Action Plan. Over 3 miles of Glendive Creek and 10 miles of associated tributaries, including Horse Creek and Eastman Creek, would be protected under the proposed easement. Each of these are identified as Tier I aquatic communities in Montana's Comprehensive Fish and Wildlife Strategy, providing habitat for native prairie fish species and an interspersed of high quality riparian habitat for wildlife.

The proposed Horse Creek Complex Conservation Easement is comprised of approximately 83% rangeland, badlands, and sagebrush grasslands. These habitats in eastern Montana are at risk of conversion by landowners seeking to increase grass production, diversify with small grain agriculture, or pursue other objectives. Native rangeland also can be at risk of degradation through improper grazing or vegetation treatments that directly impact shrubs, riparian zones, and hardwood draws. The proposed Easement contains nearly 2700 acres (17% of the Land) of hardwood draws and riparian areas, with some woody recruitment occurring. Implementation of a grazing system that adheres to FWP Minimum Standards for Grazing Livestock (see Attachment A, Draft Deeds of Conservation Easement, Exhibit C in each) would improve recruitment and the long-term sustainability of hardwood draws on the Land. These draws provide critical browse, seed and berry production, and cover for a variety of wildlife species. See Attachment B, Management Plan, Chapter 2 for a description of land cover and ecological sites that occur on the Land.

Public access in Eastern Montana is at risk by commercial interests on private land or private landowners unwilling to deal with the public. The proposed easement represents an opportunity to conserve a large area of high-quality, diverse habitat and provide public access in a landscape dominated by private land. The proposed Conservation Easement is expected to provide a minimum 600 hunter days annually for mule deer, upland game birds, antelope, whitetail, and occasionally elk. The Land lends itself well to wildlife watching. The Land is easily accessed by 3 county roads that pass through the northern and southern ends of the Land (Figure 2).

The Horse Creek Complex Conservation Easement is a single parcel of sufficient size to stand alone and provide conservation benefits for a myriad wildlife species. The public access provided by this Conservation Easement would benefit sportsmen and wildlife watchers for generations to come. Collectively, the terrestrial, wetland, and aquatic habitats, recreational opportunities, and agricultural sustainability are referred to as the land's "conservation values."

1.3 Objectives of the Action

The objectives of the proposed Horse Creek Complex Conservation Easement are twofold. First, to protect conservation values including open space, rangeland health, habitat quality, and value of the land for wildlife in perpetuity, while simultaneously preserving the agricultural character of the land and supporting the ranching operation. Second, to provide managed public access to the Land for hunting, trapping and wildlife viewing. These objectives are reflected in the Recitals and Agreement of each Deed of Conservation Easement (Attachment A) and the Management Plan (Attachment B).

1.4 Relevant Authorities

Montana Fish, Wildlife and Parks has the authority under state law (§ 87-1-201, Montana Code Annotated (MCA)) to protect, enhance, and regulate the use of Montana's fish and wildlife resources for public benefit now and in the future. Section 76-6-103 MCA authorizes the acquisition of conservation easements to protect "significant open-space land and/or the preservation of native plants or animals, biotic communities, or geological or geographical formations of scientific, aesthetic, or educational interest." Section 76-6-206 MCA provides for the review of proposed conservation easements by local planning authorities to determine compliance with local growth policies. The proposed Deeds of Conservation Easement would be submitted to Dawson and Wibaux Counties for their review in accordance with this requirement. In 1987, the Montana Legislature passed HB526 which earmarked hunting license revenues to secure wildlife habitat through lease, conservation easement, or fee-title acquisition (§ 87-1-241 and 242, MCA). The Habitat Montana Program, developed as a result of this legislation, provides direction for all FWP's wildlife habitat acquisition programs.

1.5 Relevant Plans

2015 State Wildlife Action Plan (SWAP)

<http://fwp.mt.gov/fishAndWildlife/conservationInAction/swap2015Plan.html>

The proposed Horse Creek Complex Conservation Easement is comprised almost entirely of SWAP Tier I and Tier II community types, and is within the range of an array of SWAP Species of Greatest Conservation Need (SGCN), including: half (3 of 6) of amphibian SGCN (Great plains toad, Northern Leopard Frog, and Plains Spadefoot), over a third (23 of 63) of bird SGCN (American Bittern, Baird's Sparrow, Black Tern, Black-billed Cuckoo, Bobolink, Brewer's Sparrow, Burrowing Owl, Chestnut-collared Longspur, Ferruginous Hawk, Golden Eagle, Great Blue Heron, Greater Sage-Grouse, Loggerhead Shrike, Long-billed Curlew, McCown's Longspur, Peregrine Falcon, Pinyon Jay, Red-headed Woodpecker, Sage Thrasher, Sharp-tailed Grouse, Sprague's Pipit, Veery, Yellow-billed Cuckoo), over a third (8 of 23) of mammal SGCN (Black-tailed Prairie Dog, Dwarf Shrew, Fringed Myotis, Hoary Bat, Merriam's Shrew, Preble's Shrew, Swift Fox, Townsend's Big-eared Bat), and more than half (5 of 8) of reptile SGCN (Greater Short-horned Lizard, Milksnake, Snapping Turtle, Spiny Softshell, Western Hog-nosed Snake).

1.6 Decision to be Made

The decision to be made is whether FWP should move forward with the proposed purchase of the 15,376.36-acre Horse Creek Complex Conservation Easement. Following completion of the draft Environmental Assessment (EA) and public comment period, the FWP Region 7 supervisor will issue a decision notice that makes a recommendation to the Fish and Wildlife (FW) Commission on a course of action. This course of action could be either of the Proposed Action or the No Action alternatives, or an action that is within the scope of the analyzed alternatives. As with other FWP conservation projects that involve land interests, the FW Commission and the State Board of Land Commissioners would make the final decision. This draft EA and the comments FWP receives are part of the decision-making process.

Chapter 2.0: Alternatives Including the Proposed Action

2.1 Alternative A: Proposed Action: Purchase the proposed Horse Creek Complex Conservation Easement.

The Department would purchase two, partially-overlapping conservation easements totaling 15,376.36-acres using Habitat Montana funding and funds from an NRCS ALE grant for the protection of wildlife habitat. Pending review and approval of the appraisal by FWP and NRCS ALE, the combined value of both conservation easements determined by an independent appraisal is approximately \$6,150,000. The total cost of the easement will not exceed \$6,150,000. ALE funding would cover approximately 50-55% of the total cost and Habitat Montana funds would cover the remainder. Habitat Montana funds are earmarked state funds derived from the sale of Montana hunting licenses. No Montana state tax dollars would be used to fund the Conservation Easement. The payment value under this proposal would be the combined value of both conservation easements (based on two separate appraisals). Although the two conservation easements overlap, the values assigned to each are not additive (i.e., each unique conservation term is only valued once between the two easements). As earlier described, the purpose of two easements would be to take full advantage of the ALE funding source, while also using Habitat Montana funds to expand the Easement area to encompass the entire Ranch. In addition to the cost of the Easement, FWP and the landowner would share the costs (50/50) of grazing infrastructure improvements needed to establish a grazing system that adheres to FWP Minimum Standards for Grazing Livestock (Exhibit C within each easement document in Attachment A), involving a total estimated cost of \$206,755 (for more detail see Chapter 3.6 in Attachment B). Anticipated monitoring costs of the Conservation Easement by FWP staff is estimated to be between \$1,000-2,000 annually.

Under the terms of the Deeds of Conservation Easement, each party would retain or receive certain rights. Below is a brief summary of easement terms that would impact agricultural and conservation values:

SUMMARY OF EASEMENT TERMS

(See Attachment A for Draft Deeds of Conservation Easement in their entirety)

To protect agricultural values, the landowner would retain the right to:

- Graze livestock, provided that such grazing adheres to a grazing system that meets or exceeds the FWP "Standards for Grazing Livestock" (see Attachment A, Exhibit C in each easement). The Ranch grazing system is described in the Management Plan (Attachment B)
- Till and plant 558.6 acres of Cultivated Areas for crop production, grazing, or grassland restoration and conservation, and no-till plant 327.1 acres of Seeded Areas for grazing or grassland restoration and conservation (maps in Attachment A, Exhibit D in each easement)
- Lease the Land for agricultural purposes.
- Install and maintain infrastructure on the Ranch such as water resources, sheds, roads, fences, and utilities. New or renovated fences that would significantly impact wildlife movement through the Land must be wildlife friendly, as described in the Management Plan.
- Build residences and outbuildings within identified residential development areas.
- Sell the Land, but subdivision is prohibited.
- Allow noncommercial recreational use by friends and family on the Ranch.

To protect conservation values, the Conservation Easement would:

- Prohibit the destruction, of native vegetation, sagebrush, trees, wetland, and riparian areas.
- Surface alteration would be prohibited, except in croplands and for other limited, small-scale purposes specifically allowed by the easement (e.g., extraction of materials like sand and gravel for on-Ranch use, a single landfill for disposal of household trash, paleontological extraction not to exceed 5 acres).
- Allow habitat restoration and enhancement projects.
- Limit the storage of waste and use of hazardous materials on the Ranch.
- Require prior approval for pesticide use outside of Cultivated, Seeded and Residential Development Areas, except for weed management and pesticides applied directly to livestock.
- Limit commercial use of the Land to agricultural production, temporary or seasonal outdoor events, and small businesses that do not harm conservation values.
- Prohibit the use of the Land as a game farm, game bird farm, shooting preserve, fur farm, zoo, menagerie, or related activities.
- Prohibit the establishment of a commercial feedlot.
- Prohibit separating water rights from the Land.

Public access for hunting, trapping, and wildlife viewing is guaranteed by the easement, but is subject to limitations specified by the easement and the Management Plan (Attachments A and B). The landowner must provide 600 hunter-days annually if demand exists, but has the right to regulate public use. Members of the public may be required to obtain permission prior to accessing the Land, and the landowner may manage the distribution and numbers of the public

that are allowed to access the Ranch at any given time. The landowner is prohibited from selling, leasing, or charging trespass fees to access or cross the Land for hunting, fishing, or wildlife viewing purposes.

2.2 Alternative B: No Action. The Department would not purchase the Horse Creek Complex Conservation Easement

For the No Action Alternative, FWP would not purchase the Horse Creek Complex Conservation Easement. The landowner would not be required to protect the conservation values in perpetuity. In the future, the Land could be threatened with conversion to tillage agriculture or other risks to the conservation values such as improper grazing management, subdivision, or rangeland treatments intending to enhance forage production while reducing or eliminating native shrubs and forbs. Current and future owners of the Land may be unlikely to provide public access.

Chapter 3.0: Affected Environment & Predicted Environmental Consequences

3.1 Land Use

The proposed Conservation Easement is currently a working cattle ranch, and it would remain a working cattle ranch under easement. The Ranch is comprised of about 83% rangeland and 17% hardwood draws and riparian areas. The proposed Conservation Easement includes 725.3 acres of prior-converted croplands that are currently used for grazing, and 182.4 acres that do not have a known cultivation history but are comprised mostly of tame grass. Two currently-occupied home sites occur on the Ranch, along with various infrastructure developments including outbuildings, shops, and corrals. A more detailed analysis of land cover can be found in the Management Plan, Attachment B, Chapter 2: Grasslands Component Description.

Proposed Action:

The proposed Conservation Easement would protect and conserve wildlife habitat, while providing for the continuation of the traditional ranching operation and providing public access for hunting, trapping, and wildlife viewing in perpetuity. The proposed Conservation Easement would ensure that habitat and ranching resources are maintained. The easement would prohibit destruction of native habitats or other activities that would negatively impact the Ranch's conservation values, but would allow cropping and/or seeding of prior-converted areas mentioned above. The Proposed Action Alternative ensures that the primary use of the Land in the future would be cattle ranching. The terms of the Conservation Easement do require some of the current land management practices to be modified, such as the implementation of a grazing system that adheres to "FWP Minimum Standards for Grazing Livestock" (See Attachment A, Conservation Easements, Exhibit C in each easement) as well as provisions for allowing public access. To implement and accommodate the grazing plan, the landowner and FWP would cost-

share on new fence construction and other improvements necessary to implement the grazing system.

Where the landowner owns the minerals, the Easement would prohibit mining. The Easement could not prevent mineral owners other than the landowner from developing minerals on the Ranch. The potential for oil and gas development on the Land is low. There are coal deposits in the area, but a minerals remoteness analysis indicated they would be very unlikely to be developed because the cost of extraction and reclamation would likely exceed the value of the coal. The easement does allow for existing cropped and seeded areas to be maintained, for up to 5 acres of paleontological extraction (see Attachment A, Conservation Easements, Exhibit F in the ALE CE and Exhibit E in the FWP CE), and for a single landfill to dispose of household waste and other debris generated on the Ranch. Other minimal soil-disturbing activities would occur under normal ranching operations and maintenance to existing Ranch facilities.

No Action:

If the proposed Conservation Easement were not approved, the primary land use on the Ranch would likely still be cattle ranching. However, the Ranch would be at risk of conversion (destruction of native vegetation), subdivision, and degradation of habitat due to improper grazing and other threats. Public access to the Land may be limited or precluded.

3.2 Habitat and Vegetation

The proposed Horse Creek Complex Conservation Easement provides excellent year-round habitat for mule deer, with more than 85% of the proposed easement considered high-quality mule deer winter range. The proposed Conservation Easement is within sage-grouse general range and contains intact Wyoming Big Sagebrush grasslands that provide nesting and winter cover for sage-grouse and habitat for other sagebrush associated species. The southern portion of the proposed Conservation Easement is good year-round pronghorn range. The northern portion of the proposed Conservation Easement has extensive green ash dominated hardwood draws and provides browse, seed and berry production, and cover for a variety of wildlife species. A detailed summary of land cover, plant communities, soils, and ecological sites that occur on the Land can be found in Attachment B, Chapter 2: Grasslands Component Description. The 2015 FWP Comprehensive Fish and Wildlife Management Strategy (see Chapter 1.5 above) delineates four "Tier I" community types of greatest conservation need (CTGCN) that occur on the proposed Conservation Easement: grassland complexes, sagebrush flats, mixed shrub/grass associations, and riparian & wetland on the Land. These Tier I Community Types have a low or declining status and conservation actions are recommended for these community types statewide. Further, the proposed Conservation Easement is comprised almost entirely of Tier I and Tier II community types described in the 2015 State Wildlife Action Plan (see Chapter 1.5 above).

Proposed Action:

The proposed Conservation Easement would positively impact vegetation and wildlife habitat on the Land. The terms of the Easement protect the quantity, quality, and character of the native communities found on the proposed Conservation Easement. Many shrub species are important to wildlife for cover and forage values. The terms of the Conservation Easement would prevent

the removal, control, or manipulation of sagebrush and other woody species, except in very limited and necessary circumstances. The grazing system, as described in Chapter 3 of the Management Plan (Attachment B), would maintain and enhance the vigor and productivity of vegetation through time. Riparian areas and woody draws are expected to be maintained or improved as the rest treatments in the grazing system allow shrubs and trees to rebound and reestablish. Maintaining productive vegetation will benefit both wildlife and the ranching operation. The Department would require a Baseline Inventory Report that documents the existing condition of the Ranch at the time the Conservation Easement is acquired. The report would document wildlife habitat, plant communities, roads, fences, water developments, and other features. Additional vegetation photo points and other monitoring plots would be established and maintained by FWP in appropriate areas to examine vegetation condition and long- and short-term changes as a measure of management effectiveness. The proposed action would have a positive impact on habitat and vegetation.

No Action:

Without protections offered by the terms of the proposed Conservation Easement, the quantity, quality, and character of the native plant communities found on the Land could decline. Woody draws, in particular, are at risk because grazing regimes that do not include periods of growing season rest can prevent recruitment of woody species. This is problematic for a variety of wildlife that rely on woody species for browse, seed and berry production, and cover. The remainder of the Ranch would be vulnerable to sodbusting or other development or disturbance. Future impacts to native vegetation and overall productivity of the Land could be considerable and reduced habitat quality would have detrimental impacts to wildlife.

3.3 Terrestrial Species

The proposed Conservation Easement supports the following game species: mule deer, white-tailed deer, pronghorn, occasional elk, wild turkey, sage-grouse, sharp-tailed grouse, pheasants, hungarian partridge. The proposed Conservation Easement also supports a variety of raptors and songbirds, reptiles and amphibians, small mammals, bats, and common species including bobcat, coyote, red fox, badger, racoon, and skunks. The Land is within the range of an impressive array of SWAP Species of Greatest Conservation Need, listed in section 1.5.

Proposed Action:

The proposed Horse Creek Complex Conservation Easement would benefit a variety of wildlife. The terms of the Easement would serve to protect the Land as agricultural and open space and to provide year-round and seasonal habitat for many of Montana's native wildlife species. Conserving native plant communities is important for most of Montana's indigenous wildlife species. Protection from subdivision and conversion to tillage agriculture, and implementation of the grazing system would ensure adequate quantity and quality of forage and cover for a variety of wildlife species. No adverse effects are expected on the diversity or abundance of game species, non-game species or unique, rare, threatened, or endangered species.

Wild game populations fluctuate over time and may periodically exceed FWP management objectives, thus contributing to above-average wildlife use of the Ranch, resulting in game damage problems. Such circumstances on the Ranch would be managed through public hunting

during a general season framework. Game damage assistance and prescribed hunts would be provided on an “as needed” basis to the Ranch, upon agreement of both the landowner and FWP.

The proposed action would ensure public hunting access to the Conservation Easement Land in perpetuity. Hunting and wildlife watching on the proposed Conservation Easement would not negatively impact the overall distribution and population of game species in the area. The seasonal harvest of game species is evaluated on an annual basis by FWP biologists. Hunting seasons and quota recommendations are submitted to the Fish and Wildlife Commission during the annual hunting season setting process.

Any new or renovated fencing would follow the guidelines for wildlife friendly fences described in Chapter 6 of the Management Plan (Attachment B) to ensure the fences do not impede wildlife movements (particularly pronghorn and sage-grouse) within and through the designated pastures.

No Action:

Without terms to conserve the Horse Creek Complex Land as agricultural and open space to provide year-round habitat for many of Montana's native wildlife species, there would be no provisions preventing development for recreational purposes or changes in land use that could be detrimental to wildlife. The selection of the No Action Alternative would allow the landowner to close the Land to public hunting, which would result in a lack of public access and would reduce the FWP's ability to manage big game numbers.

3.4 Fisheries Species and Water Resources

The proposed Conservation Easement includes a portion of Glendive Creek, Eastman Creek, Horse Creek, Wolf Creek, and Freeman Creek, along with a number of unnamed minor tributaries. None of the creeks on the Land support sport fish. Species that may occur in these creeks include: Black Bullhead, Brassy Minnow, Brook Stickleback, Common Carp, Creek Chub, Emerald Shiner, Fathead Minnow, Flathead Chub, Longnose Dace, Plains Minnow, River Carpsucker, Sand Shiner, Smallmouth Buffalo, Western Silvery Minnow, White Sucker, and Yellow Bullhead. One species commonly pursued by anglers, Channel Catfish, utilize Glendive Creek, but they typically don't occur as far upstream as the Ranch. If they were to utilize that portion of the creek, it would be during periods of extremely high flow during the spring.

Proposed Action:

Current agricultural uses on the Ranch have proven to be compatible with maintenance of water quality. However, if the proposed Conservation Easement is implemented, positive impacts should be realized in surface and ground water as a result of improvements in soil condition by implementing the grazing system. The grazing system will result in more residual, which will reduce runoff and soil erosion. Additional water improvements could be developed in order to improve livestock distribution, range conditions, and riparian vigor throughout the Ranch as long as the conservation values are not negatively impacted.

No Action:

Without terms to conserve the Horse Creek Complex, there would be no provisions to protect fisheries species and water resources. If the Land were developed, sodbusted, or sold without protections provided by the Conservation Easement, there would be no assurances that riparian areas, fish species, and water resources would be conserved.

3.5 Aesthetics and Recreation

The proposed Horse Creek Complex Conservation Easement has the potential to provide high-quality hunting, trapping, and wildlife viewing recreation for the public. The vast tracts of open space, rangeland, badlands, wooded draws, and riparian areas contribute to the aesthetic value of the landscape.

Proposed Action:

Implementing the proposed Conservation Easement would ensure managed public hunting, trapping, and wildlife viewing opportunities are provided on the proposed Conservation Easement in perpetuity. Hunting on the proposed Conservation Easement is currently leased to a single individual. Therefore, the proposed Conservation Easement would drastically increase the level of public recreation on the Ranch, as the landowner would be required to provide a minimum 600 hunter days annually. The proposed Conservation Easement is located within FWP Region 7, Deer/Elk/Antelope Hunting District 703. Hunting would be allowed on the Conservation Easement consistent with all Fish and Wildlife Commission-established regulations and dates/seasons. The landowner would retain the ability to manage the distribution and numbers of the hunters on the proposed Conservation Easement. The public may be required to sign in or otherwise obtain permission before entering the Land. Public access would be walk-in only and via public roads or designated parking areas. The terms of the Conservation Easement would prohibit the operation of a commercial hunting business or charging fees (sometimes known as trespass fees) for hunting, trapping, or wildlife viewing on the Ranch. See the Draft Deeds of Conservation Easement (Attachment A) and Chapter 8 of the Management Plan (Attachment B) for additional details on how public access would be managed.

The terms of the Conservation Easement would protect open space and scenic values in perpetuity by retaining current land use and prohibiting developments that would impact such values.

No Action:

Hunting on the Ranch has been leased to a private individual for the last several years. The Land has provided minimal to no public recreational opportunities. In the absence of the Conservation Easement, hunting and public access on the Ranch would likely continue to be minimal to nonexistent. There would be no guarantee of public access to or across the Land.

In the near future, the aesthetic values would likely remain unchanged under the No Action Alternative. While the Land does provide open-space aesthetics, without public access the ability of the public to enjoy this aesthetic value has been limited, and would continue to be limited. If rural subdivision, expanded tillage, or other changes in land use or developments were to occur, the aesthetic value of the area could be diminished.

3.6 Public Services, Taxes, and Community

Proposed Action:

Under the Proposed Action Alternative, the ranching operation would continue similar to the past. Neighboring landowners may observe more recreational activities by the public on the Ranch. To minimize issues of trespass onto neighboring properties, boundary signs will be posted along the exterior of the Ranch and particularly at any problem areas identified by neighboring landowners. Hunters and wildlife watchers will be provided with maps of the Land. It is the responsibility of the hunter to know where they are at and avoid trespassing. Those guilty of trespassing could be prosecuted. No other impacts to neighboring landowners are expected. There would be no impact on local or state tax bases or revenues, no alterations of existing utility systems, nor increased use of energy sources. As an agricultural property, the Ranch would continue to be taxed as it has before. There are expected to be no unfavorable changes in taxable valuation or tax revenue to local county governments. This is because agricultural land in Montana is taxed on a production basis. Unless the state legislature changes the tax law for agricultural land to a market value basis, a decline in market value due to a conservation easement will not be reflected in assessed valuation. Services required by local governments would be largely unchanged. The Conservation Easement would not impact local employment opportunities or local schools. The addition of public access to the Ranch could result in increased demand for goods and services from private businesses that support the area, which could result in a modest increase in revenues for these businesses. Infrastructure improvements needed for establishing a grazing system may also result in minor temporary need for goods and services. However, the terms of the Conservation Easement would restrict future residential and commercial developments on the Ranch.

No Action:

The No Action Alternative would not impact local taxes and public services if the Land continued to be maintained as a working ranch. However, changes in land use classifications (e.g., agricultural to recreational) could increase local property taxes for the county if such changes involved housing or other taxable developments. Such developments may also require higher demand for utilities, improved or expanded roads, and other services that would likely be partially or wholly provided by state and local governments and service utilities.

3.7 Cumulative Effects

Proceeding with the proposed Conservation Easement would contribute to the preservation of important grassland, sagebrush grassland, riparian woody draw, and rough breaks habitat for the benefit of numerous wildlife species. The implementation of the proposed grazing system would benefit native vegetation, improve or maintain rangeland health, and contribute to clean water, clean air, and functioning ecosystem processes, thus contributing to healthy wildlife populations. With regard to habitat protection, the difference between the proposed action and the no action alternative is one of degree. The easement protects the habitat with virtual certainty for perpetuity. The no action alternative entails a possibility of habitat degradation: sod-busting, sagebrush eradication, and possibly overgrazing. The likelihood and extent of this degradation is

difficult to quantify. The Ranch will continue to be a livestock operation; this use is the same between the proposed and no-action alternatives. There are 5 other Conservation Easements in FWP Region 7, but none are located in close proximity to the proposed Horse Creek-Complex Conservation Easement. They are as follows: the Buxbaum Ranch Conservation Easement south of Sidney, MT; the Fluss Ranch Conservation Easement along the Powder River south of Terry, MT; the Brewer Conservation Easement near Powderville, MT; and finally the Bice Conservation Easement and Hirsch Conservation Easement are located on the Tongue River south of Miles City, MT. Lack of access to places to hunt is a primary barrier preventing recruitment and retention of hunters. The Region 7 conservation easements provide guaranteed public access in landscape comprised of approximately 75% private lands. Public access associated with the proposed Conservation Easement could have a positive impact on local businesses, bringing income into the local community. Finally, the Conservation Easement would help retain a traditional ranching operation with the associated economic and community values. Other than impacts listed in this Environmental Assessment, no additive or interacting ties to other circumstances or events in the local area are known at this time. Based on the similar, existing conservation easements mentioned above, some of which have been in place since the mid 1980's, the anticipated cumulative effects of the proposed Conservation Easement are largely positive in nature and small in magnitude.

Chapter 4.0: Resources Considered but Eliminated from Detailed Analysis

The Montana Environmental Policy Act, MCA § 75-1-101 *et seq.* (MEPA), provides for the identification and elimination from detailed study of issues which are not significant or which have been covered by a prior environmental review, narrowing the discussion of these issues to a brief presentation of why they would not have a significant effect on the physical or human environment or providing a reference to their coverage elsewhere (ARM 12.2.434(d)). While these resources are important, they were either unaffected or mildly affected by the Proposed Action and the effects could be adequately mitigated.

4.1 Air Quality

The Department anticipates there would be no changes to the ambient air quality for either the Proposed Action or No Action Alternatives.

4.2 Noise and Utilities

The Department anticipates there would be no changes to the current noise levels or utilities for either the Proposed Action or No Action Alternatives. Under the terms of the proposed Conservation Easement, the Ranch would retain the right to maintain, repair, or replace utilities existing on the Land. Additionally, the proposed Conservation Easement would allow for new utilities and right of ways as long as they are consistent with the terms of the Conservation Easement.

4.3 Risk and Health Hazards

The Department anticipates there would be no changes to risks and health hazards for either the Proposed Action or No Action Alternatives.

4.4 Cultural and Historic Resources

The Proposed Action and No Action Alternatives would not cause a change in land use, so FWP anticipates there would be no impacts to cultural sites or historic resources. The Proposed Action does not prohibit the development of paleontological resources but requires reclamation and other practices to protect conservation values.

Chapter 5.0: Need for an Environmental Impact Statement

Based on the significance criteria evaluated in this EA, is an Environmental Impact Statement (EIS) required?

No. The proposed Conservation Easement would affect 15,376.36 acres in that it would conserve important wildlife habitat and provide public access in perpetuity with minimal effects (positive or negative) to the current land uses (agricultural—livestock operations) and to the existing natural resources of the Land.

This EA revealed no significant (negative or positive) impacts from the Proposed Action. The significance criteria described in ARM 12.2.431 were used in this determination. Based upon the above assessment, an EIS is not required and an EA is the appropriate level of review.

Some limited, minor impacts from the Proposed Action were identified in this EA, such as anticipated positive changes to vegetation and habitat from the proposed grazing system, and an increase in the number of people accessing the Land for hunting, trapping, and wildlife watching activities.

Chapter 6.0: Public Participation and Collaborators

6.1 Public Involvement

Prior to the preparation of this draft EA, formal public participation specific to the proposed purchase of this Conservation Easement began with a public scoping process. This scoping process represented the first step in the environmental review process, wherein FWP invited the public to identify any issues and concerns related to this Conservation Easement proposal. Copies of the scoping notice were mailed to neighboring landowners, interested parties, the Wibaux and Dawson County Commissioners, and DNRC and BLM staff. Notice of the public

scoping period was placed in three newspapers (the Glendive Ranger Review, the Wibaux Pioneer Gazette, and the Helena Independent Record), and on the FWP website.

Montana Fish, Wildlife, and Parks received 3 comments during the scoping process, these comments and FWP responses are listed below. Pursuant to this, FWP will continue the environmental review process to purchase the Horse Creek Complex Conservation Easement.

Comment #1:

Name: Local Resident Box [REDACTED]

City: Glendive Mt 59330

The Fish and Game should not be spending any money for access when this land can be leased for private moneys and not spend Mt taxpayer money. The state of Mt. is having serious financial problems. This is a waste of money.

FWP Response: The commenter is incorrect about the proposed Conservation Easement utilizing Montana taxpayer money (see Chapter 2.1 of this EA). No Montana taxpayer dollars would be used to fund the Conservation Easement. The commenter is correct that the state of Montana has recently completed a special legislative session to address financial issues, however the proposed Conservation Easement would not contribute to the state's budget shortfalls, nor would funds that are intended to be utilized for this Conservation Easement (federal NRCS ALE dollars and Habitat Montana dollars) be available to offset the budget shortfalls. Habitat Montana dollars are derived from hunting license sales and are earmarked for habitat conservation projects. Regarding the comment that "the Fish and Game should not be spending any money for access when this land can be leased for private moneys", access has been identified as a primary barrier to recruitment and retention of hunters nationwide. Given that the Conservation Easement would be funded in large part by hunting license sales, the public access component provides an important value for hunters that have contributed financially to the Conservation Easement through the purchase of hunting licenses. While public access is certainly an important component of the Conservation Easement, the primary objective of the Conservation Easement is to conserve, protect, and improve important wildlife habitat on the proposed Conservation Easement.

Comment #2:

Name: Bert Otis

City: Emigrant

Dear Fish Wildlife & Parks Commission,

I support the proposal to purchase a Conservation Easement on approximately 15,389 deeded acres in Dawson and Wibaux Counties, Montana. Easements or the next best thing to just purchasing the land, and sometimes better.

Comment #3:

Name:

City:

the people need to be informed of the cost of this project

FWP Response: Anticipated Conservation Easement costs are outlined in this EA in Chapter 2.1.

Comment #4

Name: pat mischel

City: Glendive

Is there a tax reduction to the Grantor of the Horse Creek Complex proposal? For Dawson and For Wibaux

Counties? How many acres in Dawson and Wibaux Counties effected?

Who is the present owner? If corporation, who is the principal?

Will there be public meetings for comment?

FWP Response. There is no tax reduction for the grantor of the Horse Creek Complex Conservation Easement (See Chapter 3.6 of this EA). The total Conservation Easement size would include 15,376.36 deeded acres. The present owner is Springhill Ranch (run by Kip and Adele Stenson) and Great Northern Properties. Great Northern Properties intends to sell the parcels included in the proposed Conservation Easement to Springhill Ranch prior to or simultaneous with the closing on the Deeds of Conservation Easement. There will be a public meeting held in conjunction with this EA, details are below.

Public notification of the EA release and opportunities to comment will be by:

- Two public notices in each of the following papers: *Glendive Ranger Review*, *Wibaux Pioneer Gazette*, and *Helena Independent Record*;
- Direct mailing or email to adjacent landowners, interested parties, Wibaux and Dawson County Commissioners, DNRC staff, and BLM staff;
- Public notice on the FWP web page: <http://fwp.mt.gov>;
- A public meeting will be hosted at the **Wibaux County Courthouse on January 4, 2018 from 6:30-8:30 pm.**

Copies of this EA will be available for public review at FWP Region 7 headquarters in Miles City and on the FWP web site (<http://fwp.mt.gov/news/publicNotices/>).

6.2 Comment Period

The public comment period will extend for thirty-one days beginning December 19, 2017. Written comments will be accepted until 5:00 p.m., January 18, 2018 and can be mailed or emailed to the addresses below:

Horse Creek Complex Conservation Easement Environmental Assessment
c/o Melissa Foster, FWP Wildlife Biologist
Montana Fish, Wildlife, and Parks
582 101 Rd
Baker, MT 59313

or email comments to: mfoster@mt.gov

6.3 Approximate Timeline of Events

(Contingent on Decision Notice and subsequent approvals)

Public Comment Period: December 19, 2017 to January 18, 2018

Decision Notice Published: Late January 2018

Project Submitted to Fish & Wildlife Commission: February 2018

Project Submitted to Montana State Board of Land Commissioners: February 2018

6.4 Offices & Programs Contributing to the Document

Montana Fish, Wildlife, and Parks

Candace Durran, Land Agent, Helena, MT

Kelvin Johnson, Habitat Biologist, Glasgow, MT

John Ensign, Region 7 Wildlife Manager, Miles City, MT

Mat Rugg, Fisheries Biologist, Glendive, MT

Brandi Skone, Region 7 Nongame Biologist, Miles City, MT

Zach Zipfel, Legal Counsel, Helena, MT

Chapter 7.0: EA Preparer

Melissa Foster, FWP Area Wildlife Biologist, Baker, MT.

Attachments:

A. Draft Horse Creek Complex Conservation Easements

B. Draft Horse Creek Complex Conservation Easement Management Plan

ATTACHMENT A: DRAFT CONSERVATION EASEMENTS

NOTE: The proposed Horse Creek Complex Conservation Easement would be comprised of two separate and distinct but overlapping perpetual conservation easements totaling approximately 15,76.36 acres in Dawson and Wibaux Counties, Montana. The two easements would function as a single, cohesive unit. The reason for two separate conservation easements, rather than one single easement, is to take advantage of available funding sources, which have somewhat unique requirements. Both conservation easements would be administered by FWP. See Chapter 1.1 (Proposed Action) and Chapter 2.1 (Alternative A: Proposed Action: Purchase the proposed Horse Creek Complex Conservation Easement) of this Draft Environmental Assessment for further information.

After Recording, please return to:
Department of Fish, Wildlife & Parks
Land Unit
P.O. Box 200701
Helena, MT 59620-0701

Horse Creek Complex 1 (ALE)

DEED OF CONSERVATION EASEMENT

THIS DEED OF CONSERVATION EASEMENT ("Easement") is granted this _____ day of _____, 201__, by Springhill Ranch, a Montana Corporation, 618 Ranch Access South, Wibaux, MT 59353-9060 ("Landowner") to the Montana Department of Fish, Wildlife and Parks, an agency of the State of Montana, whose address is 1420 East Sixth Avenue, P.O. Box 200701, Helena, Montana 59620-0701 ("Department") and with a right of enforcement to the United States of America (the "United States"), acting by and through the United States Department of Agriculture ("USDA") Natural Resources Conservation Service ("NRCS").

The following Exhibits are attached hereto and incorporated into this Deed of Conservation Easement by this reference.

- Exhibit A** - Legal Description of the Horse Creek Complex 1(ALE) Conservation Easement
- Exhibit B** - Map of the Land
- Exhibit C** - FWP Minimum Standards for Grazing Livestock and ALE Grasslands Component Plan
- Exhibit D** - Map of Existing Development Area, and Seeded Areas
- Exhibit E** - NRCS Agricultural Land Easement "Minimum Terms for Agricultural Land Easements".
- Exhibit F** - Paleontological Resources

I. RECITALS

- A.** The people of the State of Montana recognize that certain native plant communities and important fish and wildlife habitat are worthy of perpetual conservation, and have authorized the Department to acquire perpetual conservation easements, as described in § 76-6-101 *et seq.*, Montana Code Annotated ("MCA"), from willing Landowners by voluntary, cooperative means to conserve native plant communities, habitat and other natural resources of value.

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- B. The Landowner is the sole owner of certain real property in Wibaux County and Dawson County, Montana (the "Land" or "Protected Property"), comprised of approximately 10,536.49 acres legally described in Exhibit A and depicted in Exhibit B.
- C. The Land possesses significant agricultural values and communities of native plants and fish and wildlife habitat, natural and scenic open-space lands, and public recreational opportunities, all of which are collectively termed "Conservation Values" and are valuable to the people of Montana and worthy of perpetual conservation.
- D. The Conservation Values of the Land can be protected in perpetuity by the Landowner and the Department through the grant of a conservation easement to the Department with the Landowner retaining fee title to the Land and overall management of the Land consistent with the terms and conditions of this Easement.
- E. Landowner and Department agree that the Conservation Values of the Land should be preserved and maintained by the continuation of land use patterns that do not significantly impair or interfere with the protection and preservation of these Conservation Values, in perpetuity.
- F. The Land provides important opportunities for public recreational hunting, wildlife viewing and trapping and the Landowner and the Department specifically intend that this Easement afford public hunting access for recreational purposes and wildlife management purposes.
- G. This Deed of Conservation Easement is acquired with funds provided, in part, under the Agricultural Conservation Easement Program ("ACEP") 16 U.S.C. § 3865, *et seq.* and 7 CFR Part 1468 for the purposes of protecting grazing uses and related Conservation Values by restoring and conserving the Land.
- H. The Landowner intends by executing this Easement, freely, without restriction, and voluntarily, to grant to the Department this Easement, and its associated rights, to preserve and protect the Conservation Values in perpetuity.

II. AGREEMENT

In consideration of the sums paid by the Department, and in further consideration of the recitals, mutual covenants, and terms contained in this Easement and pursuant to the laws of the State of Montana and in particular to the Open-Space and Voluntary Conservation Easement Act, §§ 76-6-101, *et seq.*, MCA; the Department's wildlife habitat acquisition authority, §§ 87-1-209, *et seq.*, MCA; and Title 70, Chapter 17, MCA, the Landowner voluntarily grants and conveys to the Department, and the Department accepts, a conservation easement in perpetuity, with warranties of title, consisting of the following rights and restrictions over and across the Land described in Exhibit A and shown in Exhibit B.

A. PURPOSES

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1. The purpose of this Easement is to preserve, protect, and restore upon mutual agreement with the Landowner, in perpetuity the Conservation Values of the Land, including but not limited to the habitat the Land provides for a variety of wildlife species, and to prevent any use that will interfere with the Conservation Values of the Land. The Landowner and the Department intend this Easement to limit the uses of the Land to those activities that are consistent with the Conservation Values and the purposes of the Easement.
2. An additional specific purpose of this Easement is to provide to the Department pursuant to its authority to acquire interests in land at § 87-1-209, MCA, on behalf of the public, the right of reasonable access to the Land for recreational uses, in accordance with the terms and conditions set forth in Section II.B.5 below.
3. If one or more of the purposes of this Easement may no longer be accomplished, such failure of purpose shall not be deemed sufficient cause to terminate the entire Easement as long as any other purpose of the Easement may be accomplished. The Department and Landowner recognize that changes in economic conditions, in agricultural technologies, in accepted farm, ranch and forest management practices, and in the situation of the Landowner may result in an evolution of agricultural, silvicultural, and other uses of the Land, and such uses are permitted provided they are and remain consistent with the Purposes of this Easement.
4. Pursuant to the terms of § 76-6-107, MCA, the Land preserved by this Easement as natural land, may not, except as specifically provided herein and pursuant to statute, be converted or diverted to any uses other than those provided for by this Easement.

B. RIGHTS CONVEYED TO THE DEPARTMENT

The rights conveyed to the Department in perpetuity by this Easement are the following:

1. **Identification and Protection.** To identify, preserve, protect, and enhance by mutual agreement, in perpetuity, the Conservation Values; subject, however, to the rights reserved by the Landowner in this Easement in Section C below, and further subject to all third-party rights of record in and to the Land that are not subordinated to the terms and conditions of this Easement.
2. **Access.** Upon notice to the Landowner, to enter upon and to inspect the Land; to observe, study, and make scientific observations of the Land's wildlife, wildlife habitat and ecosystems; and to establish and maintain vegetation monitoring transects and enclosures, all to assure that the Department's rights in the Land are maintained and all in a manner that will not unreasonably interfere with the use of the Land by the Landowner. The Department shall also have the right to enter the Land to enforce the rights granted to the Department in this Easement, and Landowner expressly convey to the Department a right of immediate entry onto the Land if, in the Department's sole judgment, such entry is necessary to prevent damage to or destruction of the Conservation Values protected by this Easement. Aside from the rights of access granted in this paragraph and in Paragraph

II.B.5., this Easement does not grant the Department, nor the public, any rights to enter upon the Land.

3. **Injunction and Restoration.** To enjoin any activity on the Land or use of the Land which is inconsistent with the purposes and terms of this Easement, or which may have a significant adverse impact on the Conservation Values, and to enforce the reasonable restoration of any Conservation Values that may be damaged by such activities.
4. **Markers.** To place and replace, during inspections authorized above, small markers to identify boundaries, corners, and other reference points on the Land. Landowner shall not remove such markers without **Prior Approval** to the Department and without the Department's consent, which will not be unreasonably denied, as provided in Section II.G below.
5. **Public Recreational Access.** The right, on behalf of the general public, of access for the purpose of recreational hunting, trapping, and wildlife viewing on the Land and across the Land to adjacent public land as provided for in the Management Plan and in accordance with the following terms and conditions:
 - a. The Landowner has the right to manage the distribution of the public on the Land to address reasonable concerns for the safety of persons and property, including livestock. The landowner may require the public to obtain permission prior to entering the Land.
 - b. The public may hunt game animals and game birds of all sex and age classes in accordance with hunting regulations adopted by the State of Montana.
 - c. When requested by members of the public during all hunting seasons set by the state of Montana, Landowner must permit a minimum of 400 hunters on the Land per year ("hunter days") on a first-come, first-served basis.
 1. A "hunter day" is defined as one hunter hunting on the Land for one day, or any part of one day, measured from midnight to midnight.
 2. The Landowner, Landowner's immediate family, Landowner's shareholders, partners, employees, and immediate family of shareholders, partners, and employees of the Landowner are not defined as members of the general public by this Easement for the purpose of calculating "hunter days." The term "immediate family" is defined to include spouses, children, in-laws, and parents.
 3. Public access for hunting must be managed on a non-preferential and nondiscriminatory basis.
 - d. The hunting seasons during which the public is allowed access to the Land for hunting under this paragraph must be set and may be changed from time to time by the State of Montana in accordance with applicable laws, regulations, and policies.

e. The grant of hunting rights by the Landowner to the Department contained in this Paragraph II.B.5. shall be deemed exclusive to the Department for the benefit of the public and are specifically conveyed pursuant to: (i) § 70-17-102(1), MCA, and thereby this grant creates a servitude running with the Land, and (ii) the Montana Open Space Land and Voluntary Conservation Easement Act, § 76-6-101 *et seq.*, MCA, and thereby this grant creates a conservation easement for the purpose of protecting significant open-space land protected and preserved for recreational purposes under § 76-6-104(3)(a), MCA.

f. Those members of the public who have access to the Land pursuant to Paragraph II B.5 shall also have motor vehicle access over and across county roads and shall park in those designated areas referred to as "Parking Areas" as shown and described in the Management Plan. There shall be a minimum of 3 Parking Areas, 2 of which shall be located in the northern portion of the Land, and 1 in the southern portion of the Land. The Parking Areas shall be spaced a minimum of 1 mile apart, and provide adequate parking to accommodate hunters during the fall hunting season (see Paragraph II.B.5.d. above), approximately 5.5 spaces per Parking Area. The public may not drive off these roads for any purpose, except with the express permission of the Landowner or the Landowner's agent. The public may travel on foot from the Parking Areas or from other publicly accessible areas to hunt, trap, and/or view wildlife throughout the Land for the purposes and in the manner prescribed in this Paragraph II.B.5. of this Easement. Furthermore, the public may travel by foot from the Parking Areas to access adjacent publicly accessible lands which allow public recreational use. Upon agreement with the Landowner, the Department may open additional roads and parking areas as shown and described in the Management Plan. All roads and Parking Areas used for access by the public will be shown in the up-to-date Management Plan.

g. Furthermore, the Department reserves the right to temporarily restrict the public's access to the Land as deemed necessary or appropriate to protect the Land, wildlife or wildlife habitat, or the public.

h. Notwithstanding any provision that may be construed to the contrary, Landowner may deny access to anyone who is not conducting, or has not in the past conducted, herself or himself in a prudent, responsible, and safe manner and denial of access for this reason shall not be deemed preferential or discriminatory.

i. Public access for trapping and wildlife viewing will be directed by the Management Plan. Those members of the public participating in these activities will not count toward the minimum hunter days outlined in Paragraph II B.5. above.

j. Except as specifically set forth in this Paragraph II.B.5., this Easement does not grant public access to any portion of the Land for any reason. This Easement does not grant any public right of overnight camping.

k. The Landowner may participate in programs offered by the Department or other entities intended to reimburse or compensate the Landowner for the impacts of hunter use

of the Land. However, the Landowner and the Department acknowledge that any such hunter-impact program is administered separately from this Easement; that such program may or may not persist through time; that such program may or may not be offered for the Landowner's participation; and that nothing in this Easement provides any assurance that the Landowner will be offered the opportunity for or be accepted into any such program.

C. LANDOWNER'S RIGHTS

The Landowner reserves to themselves, and to their heirs, successors and assigns, all rights accruing from ownership of the Land, including the right to enter and manage the Land and engage in or permit others to engage in all uses of the Land that (a) are not expressly conveyed to the Department; (b) are not prohibited or restricted by this Conservation Easement; (c) are consistent with the purposes of this Conservation Easement; and (d) do not harm the Conservation Values of the Land. Some of these reserved rights identified in this Section II.C are subject to specified conditions or to the requirement of, and procedures for, obtaining the Department's **Prior Approval** or **Prior Notice** as described in Paragraph II.G. of this Easement. Without limiting the generality of the previous statements and subject to the restrictions on Landowner's activities in this Conservation Easement set forth in Paragraph II.D. hereof, the Landowner expressly reserves the following rights;

1. **Livestock Grazing.** The right to raise, pasture and graze livestock, and the right to lease pasture to another agricultural operator to raise, pasture, and graze livestock; provided that any livestock grazing is consistent with a grazing system as approved in writing by the Department as part of the Management Plan described in Paragraph II.E. of this Easement; is in accordance with the "FWP Minimum Standards for Grazing Livestock and ALE Grasslands Component Plan" more particularly described in Exhibit C attached hereto and incorporated herein by this reference; and is consistent with other specific terms in this Easement governing livestock grazing. The Management Plan provides the details of livestock grazing on the Land, including schematic diagrams of the pasture systems to be used. Any changes in the Management Plan must be adopted in a manner consistent with Paragraph II.E. in this Easement, and any grazing system so adopted or revised must continue to conform to the "FWP Minimum Standards for Grazing Livestock and ALE Grasslands Component Plan" as described in Exhibit C. For the purposes of this Easement, livestock is defined as cattle; provided, however, that other species of grazing animal may be substituted for cattle with **Prior Approval**.
2. **Leasing the Land for Agricultural Purposes.** The Land may be leased to another agricultural operator for agricultural purposes, provided that: (a) a written lease must be entered into by the Landowner and the lessee(s); (b) the lease must require the lessee to follow the terms of the Easement, as well as any applicable provisions of the Management Plan; and (c) a copy of the executed lease must be provided to the Department. The Landowner retains responsibility under this Easement for ensuring compliance with the terms of the Easement and Management Plan by lessee(s). Lease of the Land, or of a portion of the Land, is subject to **Prior Notice**, so the Department can

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evaluate and provide input for the Landowner and lessee(s) to assist in compliance with the Conservation Easement, Management Plan and grazing system.

3. **Habitat Restoration and Enhancement.** The right to conduct fish and wildlife habitat restoration and enhancement projects, in cooperation with the Department and consistent with the Management Plan. Any habitat restoration or enhancement project not specifically provided for in the Management Plan requires **Prior Approval**.
4. **Water Resources and Facilities.** The right to use, develop, and maintain water resources, including stock water ponds, ditches, irrigation structures and equipment, canals, pumps and pump sites, pipelines and water wells, necessary for grazing, wildlife, habitat restoration and improvement, and all agricultural purposes that are allowed by this Easement; provided, however, any new water development or change in water use or water distribution that would have a significant adverse impact on a perennial or ephemeral river or stream, streamflow, wetlands, riparian vegetation, or wildlife habitat, wildlife movement, or migration on or through the Land is prohibited. Maintenance of canals, ditches, culverts and drains – including the periodic removal of vegetation as necessary to keep water management facilities in operational condition – is not a violation of this Easement. Additionally, it is understood that maintenance of reservoirs, ditches and other water-resource facilities may involve removal and deposit of accumulated soil and organic matter, and the Department hereby agrees that such soil and organic matter may be removed from the water-resource facilities and deposited on the Land at or near the location of the removal activity in a manner customary to such operations and consistent with the Conservation Values.
5. **Residential Development Areas.** The purpose of the Residential Development Areas is to allow Landowner flexibility in the use of the residences and outbuildings and to cluster residential uses and other non-agricultural structures on the Land. If necessary, wells and drain fields and buried propane tanks and associated buried pipelines may be located outside of the Residential Development Areas.
 - a. One existing Residential Development Area as shown in Exhibit D.
 - b. With **Prior Approval**, the Landowner may delineate a second Residential Development Area no more than 10 acres in size. Landowner must submit the proposed location and dimensions of said new Residential Development Area to the Department.
 - c. If a new Residential Development Area is approved pursuant to this Paragraph II.C. 5, the Department may file in the public records of the affected county a “Notice of Exercise of Reserved Development Right” that documents the location of the approved new Residential Development Area for the information and benefit of Landowner, Department, and their respective successors and assigns, and the public.
 - d. No more than two Residential Development Areas are permitted on the Land.

6. **Residential Structures and Outbuildings.** Landowner reserves the right to reside in, and to construct, maintain, repair, remodel, remove and replace up to a maximum of four single-family residences, including the one existing residence. Residences must be located in Residential Development Areas described in Paragraph II.C.5. above. **Prior Notice** is required to build or move residences or outbuildings.
- a. Landowner reserves the right to construct, maintain, repair, remove, and replace additional outbuildings and commercial buildings within the Residential Development Area.
 - b. Outbuildings. For the purposes of this Easement, the term "Outbuildings" means those structures that are built within the Residential Development Areas pursuant to this Paragraph II.C.6. and are not used for human habitation but which are appurtenant to the permitted residences, including, but not limited to, offices, recreational structures, greenhouses, root and wine cellars, gazebos, pools, hot tubs, sheds, workshops, residential fences, commercial structures and garages.
 - c. Temporary recreational residential shelters. Landowner may place and make use of tents, tarps, yurts, tepees, campers, or other shelters without permanent foundations upon the Land on a temporary basis from time to time for personal use of Landowner and invited guests.
7. **Agricultural Structures.** Landowner retains the right to, maintain, repair, remodel, remove, and make additions to, and replace the following agricultural structures on the Land:
- a. Agricultural structures that are not used for human habitation, including, but not limited to barns, chicken houses, shelters, sheds, machine sheds, corrals, livestock loading docks, culverts, bridges, ditches, and irrigation structures. Barns for uses other than agriculture uses must be located in the Residential Development Areas.
 - b. With **Prior Approval**, the right to construct new agricultural structures on the Land.
8. **Man-made Structures.** Landowner has the following rights pertaining to man-made structures (in addition to those rights for structures and facilities for water use and irrigation development that are provided in Paragraph II.C.4.):
- a. The right to remove, maintain, or repair existing fences, corrals and other livestock containment structures.
 - b. With **Prior Notice** the right to construct, renovate, or replace fences (including corrals and other livestock containment structures) necessary for generally accepted agricultural land management purposes. Any new or renovated fence or other barrier that the Department determines would significantly impact wildlife habitat or wildlife movement or migration on or through the Land must be "**wildlife friendly**" as provided in the

Management Plan. This does not apply to corrals, fences, windbreaks, and other structures necessary to contain livestock, or protect stored feed.

9. **Roads.** To construct new and maintain existing roads and bridges or waterway crossings as herein permitted. Any road, bridge, or waterway crossings constructed shall be sited and maintained so as to minimize adverse impacts on the Conservation Values. Any new road construction (but not including maintenance of existing roads) shall be subject to **Prior Approval** of the Department, as set forth in Section II.G of this Easement. The Department's approval shall be contingent on confirmation that (a) the road's intended purpose is permitted by this Easement, (b) its location will not result in significant soil erosion, and (c) the new road shall not materially disturb wildlife or wildlife habitat or other protected Conservation Values. The Landowner's written request for approval shall include a construction plan describing the purpose of the road, its location on a topographic map and, to the extent deemed necessary by the Department, discussion of the following: road grade, drainage, erosion/sedimentation impacts and mitigating efforts, areas of cut and fill, and special concerns like culvert placement, bridges, fords, buffer strips between roads and streams, and fish and wildlife impacts and mitigating efforts. Seeding and reestablishment of cover vegetation, which is native or is representative of adjacent perennial plant species, and control of noxious weeds on exposed cuts, fills and banks is required on any new road construction.

10. **Noncommercial Recreational Use.** Landowner reserves to themselves and to their immediate family the right to use the Land for noncommercial recreational purposes, including hunting, in accordance with Section II.B.5. and Section II.D.9.

11. **Utilities.**

a. Existing Utilities. Landowner retains the right to maintain, repair, and upgrade utilities existing on the Land at the time of the grant of this Easement, including utility structures, lines, conduits, cables, wires, or pipelines ("Utilities").

b. New Utilities on the Land. Subject to **Prior Approval**, Landowner retains the right to install and construct new Utilities upon, over, under, within, or beneath the Land to existing and subsequently constructed structures and improvements that are expressly permitted on the Land by this Easement. The Department will require the Landowner to submit a Utility Plan as outlined in Paragraph II.C.11.d. ("Utility Plan") below.

c. New Utilities serving adjacent properties. Subject to **Prior Approval**, the Landowner retains the right to construct new Utilities and grant any associated Utility right-of-way easement serving adjacent properties. The Department will require the Landowner to submit a Utility Plan as outlined in Paragraph II.C.11.d. below.

d. Utility Plan. Landowner shall contact the Department prior to the preparation of the Utility Plan to obtain the required information to be included in such Plan that the Department deems relevant. Landowner and the Department will mutually determine the completeness of the Utility Plan and its adherence to the general and specific intentions

of this Easement prior to the Department's approval of the Plan. Any new and expanded utility services and associated right-of-way easements must be memorialized in a written agreement that is recorded in the public records of the affected counties, signed by the Landowner, the Department, and the utility service provider prior to construction.

12. Renewable Energy Generation for Use On the Land. With the **Prior Approval** of the Department, Landowner reserves the right to construct wind, solar, hydropower and other types of renewable energy generation facilities ("renewable energy production") solely for use on the Land, except that any incidental surplus energy may be sold commercially for use off the Land or credited to Landowner's utility service. Design and location of facilities and fixtures associated with renewable energy generation is subject to **Prior Approval** of the Department.

13. Pesticide Application and Weed Management.

a. Landowner shall have the right to use legally authorized pesticides (as defined by MCA 80-8-102) on seeded areas as described in Paragraph II.C.17. and shown on Exhibit D, and Residential Development Areas as described in Paragraph II.C.5. Except as provided in Paragraph II.C.13.b. and d. below, **Prior Approval** is required to use pesticides on the Land on other than seeded areas and Residential Development Areas. Any pesticide use should be only in the amount and frequency constituting the minimum necessary to accomplish reasonable control of the targeted pest species.

b. **Weed Management.** The right to use herbicides for control of noxious weeds, as defined by the state of Montana or other lawful authority with jurisdiction, and other invasive nonnative plants. Such use must be in the amount and frequency of application constituting the minimum necessary to accomplish reasonable control of weeds, and in a manner that will minimize damage to native plants. The Landowner shall have the right to use biological control agents for weed control, provided that these biological agents have been approved for the specified use by appropriate governmental agencies; and further provided that livestock used for weed control shall comply with the grazing system in Exhibit C unless otherwise authorized by **Prior Approval**.

c. **Prior Approval** is required for aerial application of any pesticide or biological control agent on the Land.

d. Landowner shall have the right to use legally authorized pesticides that are directly applied to livestock for health purposes.

14. Regulation of Public Use. The right to regulate public use of the Land at all times; subject, however, to the right of public hunting, trapping, and wildlife viewing access granted to the Department in Paragraph II.B.5.

15. Oil, Gas, or Mineral Exploration and Extraction. Mining or extraction of soil, sand, gravel, oil, natural gas, fuel, coal, or any other mineral substance owned by Landowner as of the date of the Easement or later acquired by Landowner, using any surface mining, subsurface mining, or dredging method, from the Land is prohibited; provided however,

with **Prior Approval**, limited mining activity for materials (e.g., sand, gravel, scoria, or shale) used for agricultural operations on the Land is allowed where the extraction of materials used for such agricultural operations is limited, localized, and does not harm the Conservation Values or the agricultural uses of the Land.

- a. The existing extraction sites will be identified in the Baseline Report.
- b. No more than two areas of no more than two acres each may be used at any time. Extraction locations must be reclaimed within one year of cessation of use. Seeding and reestablishment of cover vegetation, which is native or is representative of adjacent perennial plant species, and control of noxious weeds is required.
- c. If a third party owns or leases the oil, natural gas, or any other mineral substance at the time this Easement is executed, and their interests have not been subordinated to the Easement, the Landowner must notify the Department as soon as practical after Landowner becomes aware of any proposed exploration or extraction activity by such third party. Landowner and the Department shall confer to review the proposed activity and to determine ways to best mitigate any potential impact on the Land and the Conservation Values of the proposed activities. Landowner and the Department shall subsequently cooperate in an effort to influence the third party to adopt recommended mitigating measures in the third party's exploration and development activities. Nothing herein shall require the Landowner to indemnify the Department for exploration or extraction activity by any third-party mineral interest owner.

16. Subdivision and Conveyance of Land Ownership.

- a. For the purposes of this Easement, the Land shall be considered to comprise one unit, as described in Exhibit A and shown in Exhibit B. The Landowner and the Department mutually intend that the entire Land shall be maintained in unified title as a single unit. Further, for the purposes of this Easement, any other parcel designation existing at or subsequent to the date of the conveyance of this Easement, including but not limited to government lots, aliquot parts, and certificates of survey, are considered to be an integral part of the Unit within which they are located, and may not be divided, subdivided, separated or conveyed separately from the entirety.
- b. The Landowner may sell, grant, donate, bequeath or otherwise convey the Land in its entirety to another party.
- c. Landowner shall provide the Department with **Prior Notice** before entering into an agreement that would commit the Landowner to convey the Land to another party. The purpose of this notice is to afford the Department with the opportunity to review the proposed conveyance document and any associated legal agreement to ensure consistency with the provisions of this Paragraph II.C.16.

17. Surface Alteration. With Prior Notice, and as agreed to in the Management Plan, the right to seed those areas shown as "seeded areas" on Exhibit D (approximately 327.11

acres) for grazing uses and grassland restoration and conservation. Cultivation of seeded areas is prohibited.

18. Industrial or Commercial Uses. The right to:

- a. Conduct agricultural production and related activities as provided for in this Easement and the Management Plan.
- b. With **Prior Approval** and subject to the terms of Exhibit F, where applicable, conduct temporary or seasonal outdoor activities or events, as provided in the Management Plan.
- c. With **Prior Approval**, and provided it does not significantly increase vehicular traffic to or through the Land, operate home-based businesses, small-scale manufacturing of products and distribution of those products, small-scale commercial enterprises related to agriculture including but not limited to agri-tourism, processing, packaging, and marketing of farm or forest products, farm and machinery repair, and small-scale commercial enterprises compatible with agriculture.

D. RESTRICTIONS ON LANDOWNER'S ACTIVITIES

Any activity on or use of the Land that is inconsistent with the purposes and terms of this Easement is prohibited. Without limiting this general prohibition, the following activities and uses are expressly prohibited or restricted.

1. **Timber.** Landowner shall not transfer, encumber, sell, lease, or otherwise sever any timber right from the Land; except, however, Landowner may sell the rights to harvest timber for a specific forest management action authorized and approved under the provisions of II.D.2.
2. **Vegetation Removal.** The destruction, removal, control, or manipulation of native vegetation, sagebrush, planted nesting cover, or permanent cover is prohibited, except as part of or incidental to the agricultural activities and other land uses specifically allowed by this Easement or as specifically provided for in the Management Plan. The removal of live or standing dead trees is prohibited without **Prior Approval**; however, the Landowner does not require **Prior Approval** to remove trees and other woody vegetation that pose a threat to human safety, travel ways, or structures.
3. **Wetland and Riparian Areas.**
 - a. For the purpose of this conservation easement, riparian areas are defined as vegetation zones adjacent to rivers, streams, and wetlands including banks and adjacent uplands and are influenced by adjacent flowing or standing water or by a shallow water table caused by river-associated groundwater. Wild hay fields, active river channels, or eroded river banks devoid of effective wildlife cover, are not considered riparian areas.

b. The draining, filling, dredging, leveling, burning, ditching, or diking of any natural or manmade wetland or riparian area, streambank stabilization, or any other activity that significantly impacts any such area is prohibited. However, wetland areas may be restored, developed or enhanced, by either the Landowner or the Department, to benefit wildlife and to further the purposes of the Easement as a part of a restoration activity approved under Paragraph II.C.3.

c. The control, removal, or manipulation of any trees, willows, or other woody vegetation by any means is prohibited, except as needed for the ordinary course of maintaining fences and ditches provided for and allowed under this Easement or as may be allowed by the Department as part of an approved plan specifically directed to improve fish or wildlife habitat.

4. **Subdivision.** The legal or de facto division or subdivision of the Land is prohibited, which shall include, but shall not be limited to, any subdivision, short subdivision, platting, binding site plan, testamentary division, or other process by which the Land is divided into lots or in which legal or equitable title to different portions of the Land are held by different owners. The Landowner may not indirectly subdivide all or any part of the Land through the allocation of property rights among partners, shareholders, or members of any legal entity (including a homeowner's association), the creation of a horizontal property regime, interval or time-share ownership arrangement, leasing, partitioning among tenants-in-common, judicial partition, or by any other means. The Landowner and the Department mutually intend that the entire Land shall be maintained in unified title as a single unit. Notwithstanding any other provision of this Paragraph to the contrary, however, the Landowner may lease the Land for agricultural purposes subject to the terms of this Easement and the Management Plan described in Paragraph II.E. of this Easement.

The Land may not be used as open or natural space or parkland for any subdivision or development purposes or requirements on land not covered by this Easement, nor may the Landowner transfer any development or subdivision rights separate from the Land.

5. **Water Rights.** Landowner will not transfer, encumber, sell, lease, or otherwise separate water rights from the Land. If Landowner receives notice or becomes aware of a situation under which water rights may be lost from the Land, Landowner shall notify the Department, and the parties may work cooperatively to address the situation.
6. **Agricultural Chemicals.** The use of pesticides, including but not limited to herbicides, rodenticides, insecticides, and biological control agents in a manner other than as provided for in Paragraph II.C.13 is prohibited.
7. **Roads.** The construction of roads in a manner other than as provided for in Paragraph II.C.9. is prohibited.
8. **Surface Alteration.** Except for grazing uses and grassland restoration and conservation as described in Paragraph II.C.17, the cultivation or production of crops, nonperennial

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forages for human or domestic animal consumption, crop seed production, or planting of orchards, vineyards, berries, tree farms, or other perennial non-grassland agricultural product is prohibited.

9. **Commercial Recreation.** The sale or lease of access to the Land for hunting, fishing, trapping, or wildlife viewing purposes, whether or not as a part of a commercial outfitting or guiding business, is prohibited. Operating a commercial hunting, fishing, trapping, or wildlife viewing operation, or charging fees (sometimes known as trespass fees) for hunting, fishing, trapping, or wildlife viewing on the Land or for access across the Land to reach public land or other private land, is prohibited.
10. **Mineral Exploration and Extraction.** Landowner may not engage in, authorize, or contract for any exploration for, or development and extraction of minerals, coal, ore, bentonite, oil and gas, other hydrocarbons, soils, rock, sand, gravel, or similar materials, except as provided for Paragraph II.C.15. Any other mineral exploration, development, or extraction is prohibited.
11. **Residential Use.** Residential use of the Land or any portion thereof is prohibited, other than as provided for in Paragraph II.C. 5 and 6.
12. **Commercial Feedlot.** The establishment or operation of a commercial feedlot is prohibited. A commercial feedlot is defined for purposes of this Easement as a permanently constructed confined area or facility within which the Land is not grazed or cropped annually, for the purposes of engaging in the business of the reception and feeding of livestock for hire. Nothing in this Easement shall be construed to prevent Landowner from seasonally confining livestock in areas for feeding, calving, or similar activities, and nothing herein shall prevent Landowner from leasing pasture, corrals and agricultural improvements to third parties, subject to the terms of this Easement.
13. **Shooting Preserve, Wildlife Propagation, and Related Activities.** The use of the Land as a game farm, game bird farm, shooting preserve, fur farm, zoo or menagerie, or in connection with the ownership, leasing, keeping, holding, capture, propagation, release, introduction, or trade in any animal that may pose a genetic or disease threat to any mammalian, avian, reptilian, aquatic or amphibian wildlife species, whether or not indigenous to Montana, is prohibited; however, Landowner has the right to have ranch dogs and household pets on the Land.
This prohibition does not apply to the introduction, transplantation or release of fish or wildlife species on the Land by the Department, which must have the consent of the Landowner for any such introduction, transplantation or release on the Land. Domestic livestock, with the exception of sheep and goats, is allowed. Sheep and goats are allowed with **Prior Approval**.
14. **Commercial and Industrial Use.** Except as permitted in Section II.C., the establishment or operation of any commercial or industrial uses or activities on the Land, including, but not limited to, guest ranching, outfitting, restaurant, campground, trailer park, motel,

commercial swimming pool, gas station, retail outlet, or facility for the large-scale manufacture of any products is prohibited.

15. **Waste Disposal.** The processing, dumping, storage or disposal of waste, refuse and debris on the Land is prohibited, except within a single landfill for disposing of and containing personal household and agricultural rubbish and other non-toxic materials in accordance with state law and in a manner and location as provided for in the Management Plan. Abandoned homesteads and preexisting dump sites described in the Baseline Report are exempt from this provision, and with **Prior Notice** may be buried on-site or otherwise disposed of. No new material may be added to these preexisting sites. The deposit of natural organic material derived from livestock and crop production on the Land, and the deposit of material from water-resource facility maintenance activities provided for in Paragraph II.C.4., are not considered waste disposal.
16. **Hazardous Materials.** Any petroleum products, explosives, hazardous substances, toxic substances, and any other substance which may pose a present or potential hazard to human health or the environment shall not be released or dumped on the Land at any time, and shall not be stored or used, except as lawfully stored and used in necessary quantities for agricultural purposes and except as part of the oil and gas exploration and development activities specifically provided for in this Easement. The installation of underground storage tanks is prohibited.

E. MANAGEMENT PLAN

The parties to this Easement developed a Management Plan for grazing management, public access and public use management, wildlife habitat enhancement and restoration, wildlife passage improvement measures, and other matters pertaining to the management of the natural resources of the Land under this Easement. The Management Plan has been signed by the Landowner and the Department, and represents a contractual agreement between the parties to abide by its specific requirements, management actions, and restrictions. However, if there is any inconsistency between the terms of the Management Plan and this Easement, the terms of this Easement control. The parties shall meet periodically as needed to review the Management Plan and, if deemed necessary, to propose amendments. Any amendment to the Management Plan must have the written consent of both parties.

In the event that the Land is to be conveyed or has been conveyed to a new owner ("Successor in Interest"), the Department agrees to enter into discussions with the Successor in Interest for the purpose of reviewing the existing Management Plan and determining any revisions that might be appropriate to facilitate management of the Land in a manner consistent with the terms of the Easement and protection of the Conservation Values. The Successor in Interest may sign, acknowledge, and thereby continue the Management Plan that is in effect at the time of the transfer of ownership, or the Successor in Interest may sign and acknowledge a revised Management Plan agreed upon by the Department. However, in the event that the Successor in Interest has not executed with the Department a continuation of the existing Management Plan or a revised Management Plan, then the Management Plan in effect at the time of the ownership transfer shall remain in full force and effect.

F. EASEMENT BASELINE REPORT

The parties agree that a Conservation Easement Baseline Report (Baseline Report), including photographs, maps, surveys, studies, reports, and other documentation, has been completed by a Department biologist or natural resource professional familiar with the area, reviewed by the Department and Landowner, and acknowledged by them to be an accurate representation of the physical and biological condition of the Land and its physical improvements as of the date of the conveyance of this Easement. The original Baseline Report shall be maintained in the files of the Department and shall be made available to Landowner for inspection and reproduction at Landowner's request. The parties intend that the Baseline Report shall be used by the Department to monitor Landowner's compliance with the terms and conditions of this Easement. In the event a controversy arises with respect to the nature of the biological and/or physical condition of the Land and its improvements, the parties may use the report, as well as all other relevant or material documents, surveys, reports, or other information to assist in the resolution of the controversy. From time to time, with the agreement by the Landowner, the Department may prepare (or have prepared) an Updated Easement Baseline Report to document any habitat restoration or other improved habitat conditions. Upon review and approval of the updated report by the Landowner and the Department, the improved conditions documented in the Updated Easement Baseline Report shall be considered the baseline conditions to be conserved and against which the impacts of future activities shall be evaluated.

G. PRIOR NOTICE AND PRIOR APPROVAL

1. Whenever **Prior Notice** is required under this Easement, Landowner must notify the Department as provided for in this section in writing not less than 30 days prior to the date the Landowner intends to undertake such activity, unless, for safety reasons, a shorter period is necessary in which case Landowner shall give the Department as much notice as is possible under the circumstances. The purpose of requiring the Landowner to notify the Department prior to undertaking certain permitted activities is to afford the Department an opportunity to ensure that such activities are designed and carried out in a manner consistent with this Easement and its Purposes.

2. Any notice from the Department to the Landowner will be given by electronic correspondence, telephone, or as otherwise agreed, and must be at least 3 days prior to the date of occurrence unless the Department, in its sole discretion, determines that a violation is threatened or imminent or that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values.

3. Whenever **Prior Approval** is required under this Easement, Landowner must notify the Department in writing not less than 60 days prior to the date the Landowner intends to undertake the activity. The notice must be sent by courier service, or registered or certified mail, return receipt requested, or by courier, or personal delivery, and must describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit the Department to make an informed judgment as to its consistency with this

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Easement and its Purposes. The Department has 60 days from its receipt of such notice to review the proposed activity and to notify the Landowner of any objections to the proposed activity. If it is possible that the proposed activity can be modified to be consistent with the terms of the Easement, the Department shall inform the Landowner of the manner in which the proposed activity as modified may be conducted. The Department's response to Landowner's notice shall be sent by registered or certified mail, return receipt requested, or delivered by courier, or personal delivery service. In the event the Department denies the Landowner's proposed activity, the Department may provide a written determination with analysis of why such activity would significantly impact the Conservation Values of the Land.

4. If the Department fails to respond to Landowner's notice of **Prior Approval** within 60 days of their receipt of the notice, the proposed activity shall be deemed to be consistent with the terms of this Easement, and the Department shall have no further right to object to the activity identified by such notice.

5. The Landowner shall be under no liability or obligation for any failure to give **Prior Notice** or seek **Prior Approval** for any activity undertaken by Landowner necessitated by virtue of fire, flood, acts of God, or other element, or any other emergency reasonably deemed by Landowner to exist; provided, however, after such an event, if there is damage to the Conservation Values, the Landowner shall notify the Department of any such damage as soon as practicable.

6. Except as otherwise stated in this Easement, any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by registered or certified mail, return receipt requested, or delivered by courier, or personal delivery service, addressed as follows:

To Landowner:
Springhill Ranch
618 Ranch Access South
Wibaux, MT 59353-9060

To Department:
Department of Fish, Wildlife & Parks
Attention: Administrator, Wildlife Division
1420 E. Sixth Avenue
P.O. Box 200701
Helena, MT 59620-0701

With a copy to:
Department of Fish, Wildlife & Parks
Attention: Regional Supervisor
352 I-94 Business Loop
Miles City, MT 59301

or to such other address as the parties from time to time shall designate by written notice to the others. The parties shall provide each other current contact information, including phone numbers and email addresses. All notices which are so addressed and paid for shall be deemed

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effective when personally delivered, or, if sent by courier or mailed, on the earlier of receipt or five business days after deposit thereof with a courier or mail service, return receipt requested.

H. REMEDIES FOR UNAUTHORIZED USES AND PRACTICES

If the Department determines that the Landowner has violated the terms of this Easement, or if the Landowner undertakes any activity requiring approval of the Department without first obtaining such approval, the Department shall give written notice to the Landowner of the violation and demand corrective action sufficient to cure the violation, and, when the violation involves injury to the Land resulting from any use or activity inconsistent with the terms of this Easement, to restore the portion of the Land so damaged. If the Landowner:

1. fails to cure the violation within 30 days after receipt of notice from the Department, or
2. under circumstances where the violation cannot reasonably be cured within a 30-day period, fails to begin curing the violation within the 30-day period (or, within 30 days of Landowner's receipt of notice from the Department, if Landowner fails to agree with the Department in writing on a date by which efforts to cure such violation will reasonably begin), or
3. fails to continue diligently to cure such violation until finally corrected,

the Department may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement. The Department may seek to enjoin the violation, by temporary or permanent injunction, to require the restoration of the Land to the condition that existed prior to any such injury, and, if restoration is not possible to fully compensate for injury to the Conservation Values, to recover monetary damages for to which it may be entitled for violation of the terms of this Easement.

If the Department, in its sole discretion, determines that a violation is threatened or imminent and that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values, the Department may pursue its remedies under this paragraph without prior notice to the Landowner or without waiting for the period provided for cure to expire.

The Department's rights under this provision apply equally in the event of either actual or threatened violation of the terms of this Easement. The Landowner agrees that the Department's remedies at law for any violation of the terms of this Easement are inadequate. Accordingly, the Department is entitled to injunctive relief. If injunctive relief is inadequate to restore the Conservation Values as a result of a violation and to compensate the Department and the public for the loss and damage to the Department's rights, the Department shall be entitled to recover damages for violation of the terms of this Easement or injury to any Conservation Value protected by this Easement including, without limitation, damages for the loss of scenic, aesthetic, or natural resource values. Without limiting Landowner's liability therefore, the Department, in its sole discretion may apply any damages recovered to the cost of undertaking any corrective action on the Land. The Department's remedies described in this section are cumulative and are in addition to all remedies available at law or in equity.

Nothing contained in this Easement may be construed to entitle the Department to bring any action against the Landowner for any injury to or change in the Land resulting from causes beyond the Landowner's control, including, without limitation, fire, flood, storm, and natural earth movement, or from any prudent action taken to prevent, abate, or mitigate significant injury to the Land resulting from such causes.

Enforcement of the terms of this Easement is at the discretion of the Department, and any forbearance by the Department to exercise its rights under this Easement in the event of any breach of any term of this Easement by the Landowner may not be deemed or construed to be a waiver by the Department of that term or of any subsequent breach of the same or any other term of this Easement. No delay or omission by the Department in the exercise of any right or remedy upon any breach by Landowner may impair the right or remedy or be construed as a waiver, nor may any forbearance or delay give rise to a claim of laches, estoppel or prescription.

Costs of restoration of the Conservation Values that are attributable to Landowner's violation or breach of the terms of this Easement shall be borne by Landowner, unless a court orders otherwise or unless the parties mutually agree to share such costs. In the event of litigation concerning the terms of this Easement, the prevailing party is entitled to its costs and attorneys' fees.

If a dispute arises between Landowner and the Department concerning interpretation of the meaning of this Easement or concerning the consistency of any proposed use or activity with the terms or purposes of this Easement, and if Landowner agrees in writing not to proceed with the use or activity pending resolution of the dispute, either Landowner or the Department may refer the dispute to mediation by request made in writing to the other party. Within 10 days of receipt of such referral, Landowner and the Department will select an impartial mediator who shall conduct the mediation and thereby assist the parties in resolving the dispute cooperatively. Each party shall pay an equal share of the mediator's fee. In referring any matter arising under this Easement to mediation, Landowner and the Department agree that mediation offers an alternative to the expense and time required to resolve disputes by litigation and is therefore often preferable to litigation. Nevertheless, mediation pursuant to this paragraph shall be voluntary, and this mediation provision shall not be interpreted as precluding or limiting the parties from seeking legal or equitable remedies available under this Section II.H.

I. HOLD HARMLESS AND INDEMNITY

The Landowner shall hold harmless and indemnify the Department and its employees, agents, and contractors from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including without limitation, reasonable attorneys' fees, arising from or in any way connected with injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Land, as a result of the negligence or willful misconduct of the Landowner or their agents, employees or contractors, unless due to the negligence or willful misconduct of the Department or its agents, employees, or contractors. Nothing herein shall create any indemnity obligation by the Landowner to the Department for any hunter, angler, or recreational user of the property, unless such loss or injury is due to the negligence or willful misconduct of the Landowner or their agents, employees or contractors.

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The Department similarly agrees to hold harmless and indemnify the Landowner and their employees, agents and contractors from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including without limitation, reasonable attorneys' fees, arising from or in any way connected with injury to or the death of any person or physical damage to any property, resulting from any action, omission, condition, or other matter related to or occurring on or about the Land, as a result of the Department's exercise of its rights granted under this Easement, unless due to the negligence or willful misconduct of the Landowner or their agents, employees or contractors.

J. TERMINATION, EXTINGUISHMENT, CONDEMNATION, REIMBURSEMENT

This Easement constitutes a real property interest immediately vested in the Department. It is the unequivocal intention of the parties that the conservation purposes of this Easement are carried out in perpetuity. If, however, circumstances arise in the future that render the purposes of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. The parties agree that changed economic conditions may not be considered as circumstances justifying the modification, termination or extinguishment of this Easement.

If the Department or Landowner seeks to extinguish this Easement by judicial proceedings, or should any interest in the Land be taken by the exercise of the power of eminent domain, or acquired by purchase in lieu of condemnation with the **Prior Approval** of the Department, the Department is entitled to a proportional share of the proceeds of any sale, exchange, or involuntary conversion of the Land formerly subject to this Easement. The Landowner and the Department shall act jointly to recover the full value of the property interests in the Land subject to the taking or in lieu purchase and all direct costs or incidental damages to which each is entitled.

For the purposes of this paragraph, the ratio of the value of the Easement to the value of the Land unencumbered by the Easement remains constant as determined as of the date of this grant. The parties agree that this ratio is ____ percent, as was determined by independent appraisal at the time of the grant of this Easement, and the parties further agree that the value of any future interest of the Department will not include any value attributable to authorized improvements to the Land made by the Landowner after the date of this grant. Therefore, in the event of any whole or partial judicial extinguishment, or eminent domain or purchase in lieu of condemnation, Landowner shall be entitled to receive from the financially liable party ____ percent of the unencumbered value of the real property and the Department shall be entitled to receive ____ percent of the unencumbered value of the real property. The Department shall use all such proceeds that it receives in a manner consistent with the conservation purposes of this Easement.

K. SUBORDINATION

If at the time of conveyance of this Easement, the Land is subject to a mortgage [or Deed of Trust or Contract for Deed] or other security interest, in favor of _____ [Bank], [address] ("Lienholder"). Said Mortgage/Deed of Trust/Abstract of Contract for Deed was

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recorded on _____, in Book _____, page _____, under Document No. _____, Records of _____ County, Montana (the "Mortgage"), the Lienholder has agreed by separate Subordination Agreement, which will be recorded immediately after this Easement is granted, to subordinate its rights in the Land to this Easement to the extent necessary to permit the Department to enforce the purposes of the Easement in perpetuity and to prevent any modification or extinguishment of this Easement by the exercise of any rights of the Lienholder or other holders of a security interest. The priority of the existing mortgage or other security interest with respect to any valid claim to the proceeds of the sale or insurance, or to the leases, rents, and profits of the Land is not affected by this Easement. All provisions contained in this Section II.K., shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.

L. ASSIGNMENT

This Easement is transferable, but the Department may assign this Easement only to an organization that is a qualified organization at the time of transfer under § 170(h) of the Internal Revenue Code of 1986, as amended (or any successor provision then applicable), and the applicable regulations promulgated thereunder, and authorized to acquire and hold conservation easements under the laws of the state of Montana. As a condition of any assignment, the Department shall require that the conservation purposes of this Easement are to be carried out in perpetuity.

M. AMENDMENT

If circumstances arise under which an amendment to or modification of this Easement would be appropriate as set forth in the Department's Amendment Policy, the Landowner and the Department are free to jointly amend this Easement; provided that no amendment may be allowed that will affect the compliance with or the qualification of this Easement under any applicable laws, including § 76-6-101, *et seq.*, MCA, or §170(h) of the Internal Revenue Code, as amended. Any amendment must be consistent with the purposes of this Easement, may not affect its perpetual duration, and either must enhance, or must have no effect on, the Conservation Values which are protected by this Easement. Furthermore, any amendment must not result in prohibited inurement or private benefit to the Landowner or any other parties. Any Easement amendment must be in writing, signed by both parties, and recorded in the public records of the affected counties.

N. RECORDING

The Department shall record this instrument in a timely fashion in the official records of the affected counties and may re-record it at any time as may be required to preserve its rights in this Easement.

O. REPRESENTATIONS AND WARRANTIES

Landowner represents and warrants that, after reasonable investigation and to the best of their knowledge:

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1. Landowner has clear title to the Land; that Landowner has the right to convey this Conservation Easement; and that the Land is free and clear of any encumbrances, except those encumbrances that have been expressly approved by the Department.
2. Any handling, transportation, storage, treatment or use of any substance defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in anyway, harmful or threatening to human health or the environment, that has occurred on the Land prior to the date of this Easement has been in compliance with all applicable federal, state, and local laws, regulations, and requirements. No deposit, disposal, or other release of any hazardous substance has occurred on or from the Land, in violation of applicable law.
3. No underground storage tanks are located on the Land, whether presently in service or closed, abandoned, or decommissioned, and no underground storage tanks have been removed from the Land in a manner not in compliance with the applicable federal, state, and local laws, regulations, and requirements.
4. Landowner and the Land are in compliance with all federal, state, and local laws, regulations, and requirements applicable to the Land and its use.
5. There is no pending or threatened litigation in any way affecting, involving, or relating to the Land, other than the ongoing statewide adjudication of water rights in Montana.
6. No civil or criminal proceedings or investigations have been instigated at any time or are now pending, and no notices, claims, demands, or orders have been received, arising out of any violation or alleged violation of, or failing to comply with, any federal, state, or local law, regulation, or requirement applicable to the Land or its use, nor do there exist any facts or circumstances that Landowner might reasonably expect to form the basis for any such proceedings, investigations, notices, claims, demands, or orders.

P. GENERAL PROVISIONS

1. Controlling Law. The interpretation and performance of this Easement will be governed by the laws of the State of Montana.
2. Construction. Any general rule of construction to the contrary notwithstanding, this Easement must be liberally construed in favor of the grant to effect the purposes of this Easement and the policy and purposes of § 76-6-101, *et seq.*, MCA. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes of this Easement that would render the provision valid must be favored over any interpretation that would render it invalid.
3. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged into this

Easement. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with Section II.M above.

4. No Forfeiture. Nothing contained in this Easement will result in a forfeiture or reversion of Landowner's title in any respect.
5. Successors. This Easement is binding upon, and inures to the benefit of the parties, their heirs, administrators, successors and assigns, and continues as a servitude running in perpetuity with the Land.
6. Termination of Rights and Obligations. A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Land, except that liability for acts or omissions occurring prior to transfer survive transfer.
7. Severability. If any provision of this Easement is found to be invalid, the remainder of the provisions of this Easement remain in effect.
8. Subordination. No provision of this Easement is to be construed as impairing the ability of Landowner to use the Land as collateral for any loan, provided that any mortgage or lien arising after the date of execution of this Easement shall be subordinate to the terms of this Easement.
9. Subsequent Deeds and Instruments. The Landowner agrees that reference to this Easement will be made in any subsequent purchase and sale agreements, deeds, or other legal instruments conveying an interest in the Property (including any leasehold interest).
10. Counterparts. This Easement may be executed in counterparts which, taken together, shall constitute one and the same instrument.
11. Joint Obligation. The obligations imposed by this Easement upon Landowner shall be joint and several.
12. Section Headings. Section headings are for convenience only and will not be given effect in interpretation of this Easement.

TO HAVE AND TO HOLD unto the Department, its successors, and assigns FOREVER.

IN WITNESS WHEREOF, the Landowner and the Department have set their hands on the day and year first above written.

This Agricultural Land Easement is acquired with funds provided, in part, under the Agricultural Conservation Easement Program (ACEP). The Exhibit E is attached hereto and incorporated herein by reference and will run with the land in perpetuity. As required by 16 U.S.C. Section 3865 et seq. and 7 CFR Part 1468, and as a condition of receiving ACEP funds, all present and future uses of the Protected Property identified in Exhibit A is and will remain subject to the terms and conditions described forthwith in this Addendum entitled Minimum Deed Terms For

*Horse Creek Complex Conservation Easement 1 (ALE)
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The Protection Of Agricultural Use in Exhibit E that is appended to and made a part of this easement deed.

GRANTED BY: LANDOWNER

STATE OF MONTANA)
 : **ss.**
COUNTY OF DAWSON)

This instrument was signed before me on _____, 201__,
by_____.

(SEAL)

Notary Public

STATE OF MONTANA)
 : **ss.**
COUNTY OF WIBAUX)

This instrument was signed before me on _____, 201__,
by_____.

(SEAL)

Notary Public

Martha Williams, Director

Notary Public

*Horse Creek Complex Conservation Easement 1 (ALE)
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EXHIBIT A

Legal Description of the Horse Creek Complex 1 (ALE) Conservation Easement

Legal Property Description of Horse Creek Complex, Wibaux County
T13N, R57E MPM
Section 13: NW ¼, N ½ NE ¼, SW ¼ NE ¼, S ½ Section 14: N1/2SE1/4, SW1/4SE1/4 Section 22: S1/2 Section 23: All Section 26: All Section 27: All
T13N, R58E MPM
Section 4: Lots 1, 2, 3, 4, S1/2NW1/4, SW1/4NE1/4, S1/2 Section 5: All Section 7: All Section 8: NE1/4, W1/2SE1/4, S1/2SW4 Section 17: E ½
T14N, R58E MPM
Section 26: W1/2NE1/4, E1/2NW1/4, SW1/4NW1/4, N1/2SW1/4, SW1/4SW1/4 Section 28: S1/2, NE1/4 Section 32: NE1/4, W1/2SE1/4

Legal Property Description Horse Creek Complex, Dawson County
T13N, R57E MPM
Section 1: Lots 1, 2, 3, 4, S1/2N1/2, S1/2 Section 2: Lot 4, SE1/4NE1/4, SW1/4, E1/2SE1/4 Section 2: Lots 1, 2, 3, SW1/4NE1/4, S1/2NW1/4, W1/2SE1/4 Section 11: All Section 12: S1/2N1/2, W1/2SE1/4, N1/2SW1/4 Section 14: NW ¼ Section 14: W ½ NE ¼, N ½ SW ¼, SW ¼ SW ¼ Section 15: S ½ S ½ Section 22: S ½ NW ¼ Section 22: N ½ NW ¼
T14N, R57E MPM
Section 25: S1/2SW1/4SW1/4, SE1/4SW1/4, S1/2NE1/4SW1/4, S1/2SW1/4NE1/4, SE1/4NE1/4, SE1/4 Section 26: S1/2SE1/4SE1/4

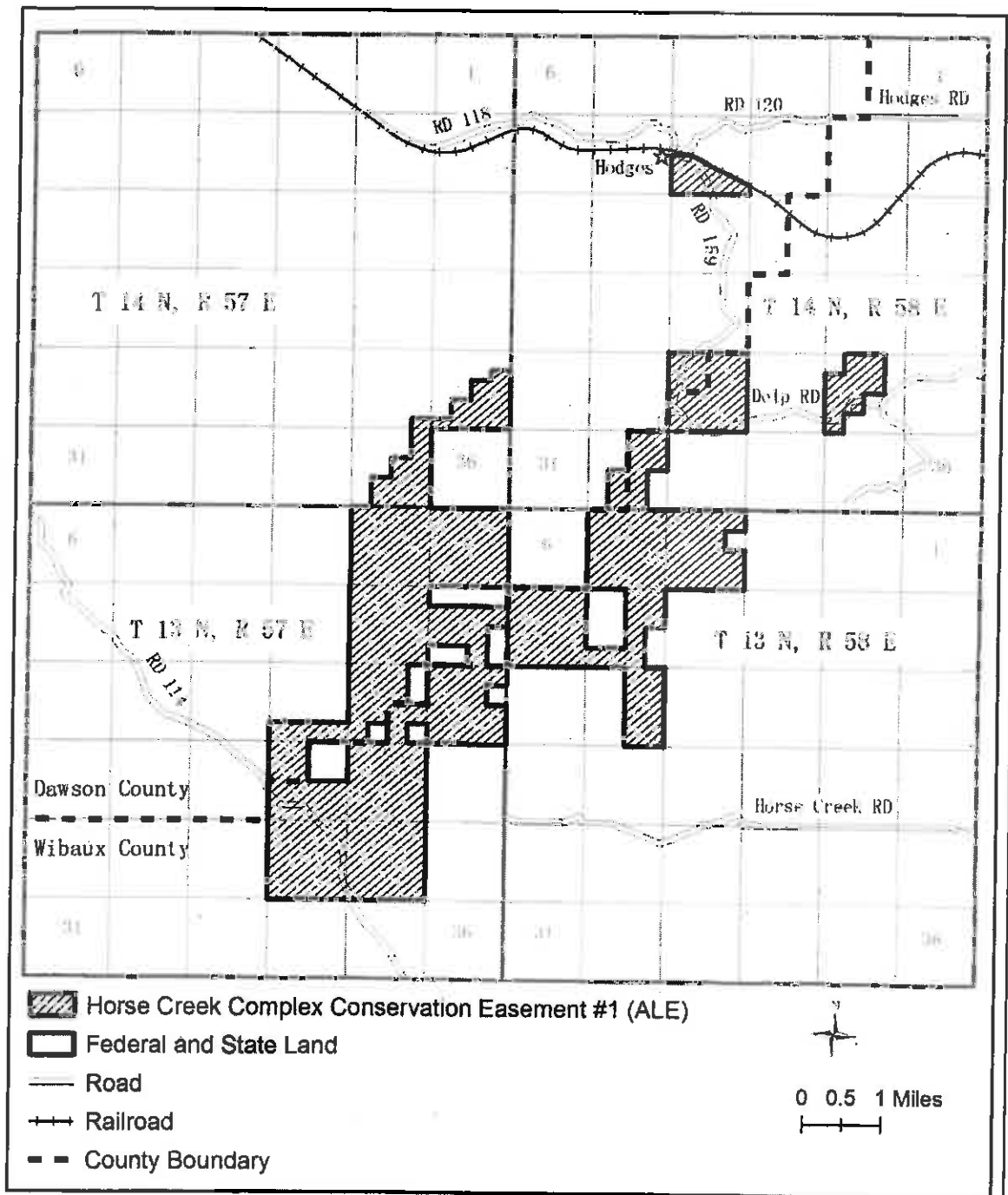
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Section 35: SE1/4SW1/4, S1/2NE1/4SW1/4, S1/2SW1/4NE1/4, NE1/4NE1/4, SE1/4NE1/4, SE1/4
T14N, R58E MPM
Section 9: That portion of the S ½ laying south of the Railroad Right of Way. Section 28: NW ¼ Section 32: E ½ SW ¼

END OF EXHIBIT A

EXHIBIT B

MAP OF THE LAND



END OF EXHIBIT B

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EXHIBIT C
FWP MINIMUM STANDARDS FOR GRAZING LIVESTOCK
AND
ALE GRASSLANDS COMPONENT PLAN

Introduction

The following grazing standards represent the minimum required by FWP of a landowner who reserves the right to pasture and graze livestock (private and public land). These standards apply to all FWP funded projects; at times it may be necessary to provide more rest from grazing than described as minimum to meet specific wildlife or fisheries habitat objectives. The minimum is most frequently applied (without additional adjustment for wildlife and fisheries needs) on projects like conservation easements and Upland Game Bird Habitat Enhancement Projects where the property remains in private ownership and agricultural use remains the primary objective. On FWP-managed Wildlife Management Areas (WMAs), wildlife production and habitat conservation are the primary objective and when livestock grazing occurs it is not unusual for the amount of rest from livestock grazing to exceed that required by the minimum standard. Also on WMAs, grazing intensity may be reduced to a level significantly lower than allowable by the minimum standard. These standards are designed to address management of both upland and riparian landforms.

Why a minimum standard?

Livestock grazing is the predominant land use in Montana. As the state's primary fish and wildlife management agency, FWP is actively involved with livestock grazing as it influences fish and wildlife habitats throughout Montana. About 2.4 million cattle are maintained in Montana. Livestock grazing occurs on about 69% of the state's land surface. Potential impacts to fish, wildlife and their habitats caused by grazing are well documented in the literature. Also well documented are potential benefits for conservation that can be derived for some wildlife species through carefully planned livestock grazing strategies. Conserving wildlife habitat while continuing livestock grazing typically requires management strategies that differ from those employed for the sole purpose of maintaining a sustainable livestock forage base that maximizes livestock production. One reason for the difference in management strategies is because vegetation is much more than a forage base for wildlife. Vegetation species composition, structure, and diversity are important aspects of cover essential to the survival and production of wildlife. Healthy riparian communities are critical not only for aquatic species but for proper channel and flood plain function. Seventy-five percent of all Montana wildlife species rely on riparian areas for all or a portion of their lives. This includes many species covered in the FWP's Comprehensive Fish and Wildlife Strategy. When livestock grazing occurs, it is not unusual for cover to be the population limiting factor for many species. Aldo Leopold referred to this concept of habitat quality as 'Quality of Landscape'. Addressing cover is especially important in implementation of FWP's Comprehensive Fish and Wildlife Strategy. It is therefore possible that a livestock operator may be employing a grazing strategy that maintains a sustainable forage base on most of the property, but may not be providing adequate forage, cover, or floral diversity for important fish and wildlife species.

Sustainable livestock production often employs grazing strategies emphasizing production and maintenance of grass species while placing less emphasis on the maintenance of forbs and woody plants. Many wildlife species require grazing strategies that emphasize healthy woody plants and availability of forbs and grass seed heads on at least portions of the landscape every year. The maintenance of robust woody vegetation and cover is also a very important component of healthy riparian systems. Healthy ecological systems are essential for a variety of aquatic and terrestrial riparian obligates.

The purpose of FWP's minimum grazing standards is to achieve a balance between maintaining sustainable agriculture and quality fish and wildlife habitat on working ranches and to provide flexibility to conserve and protect habitat needs on WMAs where wildlife habitat is the primary objective and agriculture is secondary. FWP has applied the standard successfully over the past 30 years on a variety of projects ranging from working cattle ranches to FWP WMAs. There are examples in Montana and other states where a grazing standard similar to FWP's is being applied by livestock operators independent of FWP.

Grazing Plan

Prior to grazing livestock, the Landowner and FWP must agree upon and implement a grazing plan. A grazing plan includes a map of the pastures, a grazing formula specific to those pastures, the class of livestock, and other information pertinent to the management of livestock. Format for the grazing plan is included as part of the management plan template for conservation easements. The grazing plan will be included as part of the Management Plan for easement projects, and will define the limits and extent to which grazing may occur. The Management Plan may be amended by mutual consent, as more particularly described in Paragraph II.E. of the Conservation Easement. For other projects, the management plan will be included as an attachment to the grazing lease or contract. On conservation easements, the grazing plan will be enforceable only on lands covered by the easement.

Upland Minimum Grazing Standard for Summer/Fall Systems

This standard applies to upland pastures in native plant communities (i.e. generally on soils that have never been plowed) and for all riparian pastures. The grazing plan must meet or exceed minimum levels of periodic rest from livestock grazing to allow native plants adequate opportunity to reproduce and replenish root reserves. The minimum amount of rest required for any pasture grazed in one year during the plant growing season is defined as rest throughout the following year's growing season (i.e. grazing deferred until seed-ripe), followed by one year of yearlong rest, as shown in Table 1. Each pasture receives only one grazing treatment per year, and the treatments are rotated annually as shown in Table 1. The growing season is defined as beginning with the period of rapid plant growth (generally early to mid-May) until seed-ripe for the latest maturing native grasses, such as bluebunch wheatgrass or western wheatgrass (generally early August). Because the exact dates can vary as much as a few weeks depending on the location in Montana, specific dates for livestock movement are developed for each project. Occasionally it may be necessary for the grazing system to allow for some livestock to be in the pasture scheduled for the A treatment (Table 1)

beyond the growing season.

A three-pasture grazing system is used as an example (Table 1) to show how the landowner might typically rotate livestock through pastures to meet the minimum levels and required sequence of rest from livestock grazing. In practice, the landowner is not limited to any particular number of pastures; many projects include more than three pastures. In some instances, sub-pastures are employed to meet riparian or other objectives on the land. If livestock are grazed, they must be moved through the pastures in compliance with these standards and the grazing plan. Where grazing occurs during the growing season, the three-treatments outlined in Table 1 are essential and the total number of pastures and/or sub-pastures will vary between projects.

Table 1. Livestock Grazing Formula using a three pasture approach as an example.

Grazing Seasons	Pasture 1	Pasture 2	Pasture 3
Year One	A	B	C
Year Two	B	C	A
Year Three	C	A	B
When all treatments have been applied to all pastures, the grazing rotation begins again at year one.			
A = livestock grazing allowed during the growing season; B = livestock grazing begins after seed-ripe time; C = rest from livestock grazing yearlong.			

Winter and/or Early Spring Grazing

In some situations, an early grazing treatment (prior to mid- May) may be considered. However, it must be kept in mind that grazing capacity and forage production in the year a pasture is grazed from winter to beyond mid-May, will be temporarily reduced. On projects where early spring grazing (prior to rapid plant growth) is combined with summer (active growing season) grazing the three grazing treatments described in Table 1 must be employed.

It is usually more efficient to manage winter grazing separately from spring-summer grazing. If livestock are to be grazed in a native range or riparian pasture in winter or early spring (generally December through early May), and a separate grazing formula is required, it must be coordinated with the summer-fall grazing system as follows: Minimum required rest in pastures where livestock are grazed and/or fed hay during winter is one winter of rest in every two (2) years. Hay, grain, salt, protein or other supplements will not be placed in riparian areas during winter or any other season. Minimum required rest in pastures where livestock are grazed in spring, prior to early May, is one spring of rest in every two years. Any pastures grazed later in spring than early-mid May require the greater amount of rest shown in the table 1. As a minimum, when grazing is limited to winter or the non-growing season period, a two-pasture alternate use approach is frequently used. The area designated for winter grazing is divided into two pastures and each year one pasture is grazed during winter months and the other rested and use is alternated from year to year.

During winter months cattle tend to concentrate in wooded areas (shrub or tree-dominated

areas) for shelter. This must be kept in perspective when assessing the impacts to woody vegetation. It is often the case that with careful placement of hay, cattle impacts to woody vegetation can be kept to a small portion of the area. If this is not the case, it might be necessary to fence a portion of the woody vegetation to protect it from damage, but should only be done once efforts to control livestock distribution by other means have proven ineffective. An acceptable level of impact will vary depending on the objectives (i.e. a level of woody vegetation impact acceptable for a working cattle ranch may be much different than for a WMA).

Scope

The goal is to include as much of the lands under easement as possible within the grazing system, but one must be realistic in recognizing the unique needs of a livestock operation. For instance, it may be necessary to set aside small areas as animal husbandry units to be used at the landowner's discretion. Such areas might include calving pastures, branding pastures, sorting pens, bull pastures, holding corrals, or pastures used for weaning and shipping. Also, one or more pastures may be necessary for rounding up or transitioning livestock between summer/fall and winter seasons, which may require annual fall grazing. As long as the majority of the native rangelands involved are within a grazing system that meets the minimum standards for yearlong rest and season long deferment, this is acceptable.

Non-native Pasture

It is common for livestock operators to have pastures on their land that are non-native range. The landowner's goal is usually to keep these pastures productive as non-native pasture. The pastures typically are seeded with an exotic pasture grass or grass mix. On occasion forbs like dry-land alfalfa are included in the planting. The minimum standards for season long deferment and yearlong rest applied to native rangelands do not necessarily apply to non-native pastures. In cases of non-native pasture, a grazing strategy that is coordinated with the grazing system and meets the needs of the ranch should be worked out. In the case of crested wheatgrass pasture it may be necessary to allow grazing early (late-winter or early spring) each year to maintain palatability. In the case of other pasture grasses, such as smooth brome, a deferred approach works well; a pasture is grazed during the growing season in year one then deferred from grazing until near seed-ripe in year 2 (about the time such grasses would normally be harvested as hay). This will maintain the productivity of the non-native species until replanting is necessary and in some cases maintain them as attractive feeding sites for large wild ungulates. It is important to keep in mind that these areas, unlike native range, are essentially cropland and whether grazed or left idle will eventually need some sort of agricultural practice to maintain their productivity.

It is usually best to leave irrigated pasture management to the landowner's discretion. If important riparian is included in the field it might be necessary to fence the riparian zone from the irrigated pasture to protect it from livestock grazing. Usually grazing strategies employed on irrigated pasture are not consistent with proper management of key native riparian plants. In such situations, it may be necessary to apply the guideline Series entitled: The Need for Stream Vegetated Buffers Parts 1 through 3, Montana Department of Environmental Quality

2008.

Livestock operators often place cows in hayfields during winter months. In such cases the field should be managed at the landowner's discretion and in some instances, it might be necessary to fence out riparian from the hayfield to protect it from grazing.

Stocking Rate

Usually FWP does not require a maximum stocking rate as part of the grazing strategy on easements or Upland Game Bird Habitat Enhancement Projects. In such cases it is clearly stated in the grazing plan, that the maximum stocking rate will be ultimately determined by the operator's ability to conform to the grazing system. In other words, the livestock numbers may increase as long as the plan can be followed and livestock movement dates are not compromised. Such an approach is consistent with the reality that, for most easement projects, the primary use of the land is agricultural.

Occasionally a landowner has requested that an upper limit stocking rate be established as a stipulation in the easement. As long as the number of livestock is realistic this is not a problem.

On lands owned by FWP any grazing that occurs will be at stocking levels determined by the agency and approved by the FWP Commission.

Mineral and Other Supplements

On privately owned grazing lands the landowner is given more discretion on locations for placement of mineral block than on FWP lands. However, regardless of land ownership the placing of mineral block within riparian areas will be strongly discouraged. On FWP lands the placement of mineral block will be described as part of the grazing plan. Supplements will be placed away from riparian areas, ponds, and roads. Rocky (stable soil) areas on ridge tops or in the trees are preferred sites.

On FWP lands livestock within pasture grazing systems are not to be fed hay.

Flexibility

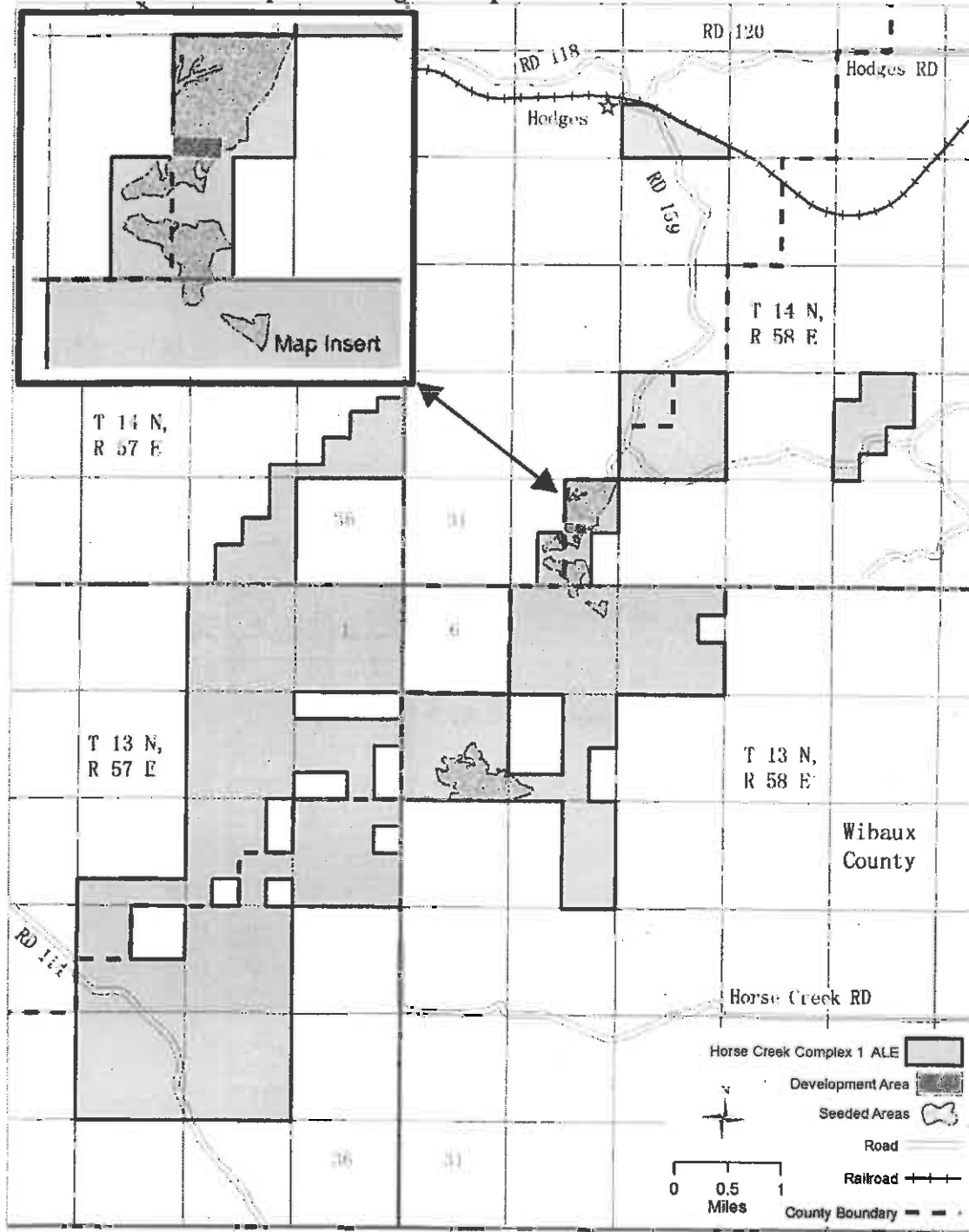
Rarely, a severe environmental influence (i.e. fire, drought, grasshoppers) may require a onetime deviation from the prescribed grazing plan. In such cases the landowner is to notify the local FWP representative of the problem. In a timely manner the local FWP representative, Habitat Section representative, and landowner will meet to discuss the issue and work out a solution. It is important to keep in mind that short term adjustments to the grazing plan must be the exception rather than the rule. Allowing grazing to occur in a pasture scheduled for rest is always a last resort. FWP has managed grazing systems across Montana through a variety of severe environmental events. This experience has shown that when a legitimate problem exists an alternative can usually be found that avoids grazing the pastures scheduled for rest.

END OF EXHIBIT C

*Horse Creek Complex Conservation Easement I (ALE)
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EXHIBIT D

Map of Existing Development Area and Seeded Areas



END OF EXHIBIT D

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EXHIBIT E

MINIMUM TERMS FOR AGRICULTURAL LAND EASEMENTS

The Agricultural Conservation Easement Program, 16 U.S.C Section 3865 et seq., facilitated and provided funding for the purchase of an Agricultural Land Easement (ALE) on real property described in Exhibit A, hereafter referred to as "the Protected Property" for the purpose of protecting grazing uses and related conservation values by restoring and conserving the Protected Property.

Springhill Ranch, a Montana Corporation acknowledges that the ALE is acquired by the Department to protect grazing uses and related conservation values by restoring and conserving the Protected Property. Baseline conditions of the Protected Property are set forth in a Baseline Documentation Report, a copy of which is maintained in the files of the Department.

In order to ensure compliance with the Agricultural Conservation Easement Program, 16 U.S.C Section 3865 et seq. and 7 CFR Part 1468, the following rule of interpretation will govern any and all inconsistencies between the ALE and this Exhibit. Notwithstanding any other provision of the ALE, the Parties agree that all present and future use of the Protected Property is and will remain subject to all of the following terms and conditions identified in Section I and II. If the terms and conditions in Section I and II are inconsistent with terms and conditions in other sections of the ALE, Section I and II will control; provided however, if other sections of the ALE have terms and conditions that are consistent with, but more restrictive to the rights of the Landowner than the terms and conditions in Section I, Paragraphs 1, 2, and 3, those more restrictive terms and conditions will control. If other sections of the ALE are more restrictive to the rights of the Landowner than Section I Paragraph 4 and 5 and Section II then Section I Paragraph 4 and 5 and Section II will control.

SECTION I - MINIMUM CONSERVATION DEED RESTRICTIONS

Even if the Protected Property consists of more than one parcel for real estate tax or any other purpose or if it was acquired previously as separate parcels, it will be considered one parcel for purposes of this Easement, and the restrictions and covenants of this Easement will apply to the Protected Property as a whole.

The terms and conditions of the ALE run with the land and are binding upon the Landowner, the Department and their respective heirs, successors, agents, assigns, lessees, and any other person claiming under them must comply with all terms and conditions of this easement, including the following:

1. Agricultural Land Easement Plan. As required by 16 U.S.C. Section 3865a, agricultural production and related uses of the Protected Property are subject to an ALE Plan, as approved by NRCS, to promote the long-term viability of the land to meet the ALE purposes. The ALE Plan must also be approved by the Landowner and Department. Landowner agrees the use of the

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property will be subject to the ALE Plan on the Protected Property.

The ALE Plan is incorporated by reference and must not include any provisions inconsistent with the conservation purposes of this ALE. The Department and Landowner agree to update the ALE Plan in the event the agricultural uses of the Protected Property change. A copy of the current ALE Plan is kept on file with the Department.

The Department must take all reasonable steps to secure compliance with the ALE Plan. In the event of substantial or ongoing noncompliance with the ALE Plan or the requirement to update the ALE Plan, NRCS may notify the Department. NRCS will give the Department and Landowner a reasonable amount of time, not to exceed 180 days, to take corrective action. If Department fails to enforce the terms of the ALE, including, but not limited to compliance with the ALE Plan, the United States may exercise its right of enforcement.

2. Limitation on Impervious Surfaces. Impervious surfaces will not exceed 2%, of the Protected Property, excluding NRCS-approved conservation practices. Impervious surfaces are defined as material that does not allow water to percolate into the soil on the Protected Property, including, but not limited to, buildings with or without flooring, paved areas, and any other surfaces that are covered by asphalt, concrete, or roofs. This limitation does not include public roads or other roads owned and controlled by parties with rights superior to those rights conveyed to Department by this ALE.

3. Limitations on Nonagricultural Uses. Any activities inconsistent with the purposes of the ALE are prohibited. The provisions of this ALE limit the types of agricultural operations that can occur on the Protected Property to those that restore or conserve grassland, and protect grazing uses, and related conservation values. The following activities are inconsistent with the purposes of ALE and are specifically prohibited, subject to the qualifications stated below:

(A) Subdivision – Separate conveyance of a portion of the Protected Property or division or subdivision of the Protected Property is prohibited.

(B) Industrial or Commercial Uses – Industrial or commercial activities on the Protected Property are prohibited except for the following:

(i) agricultural production and related uses conducted as described in the ALE Plan;

(ii) the sale of excess power generated in the operation of renewable energy structures and associated equipment or other energy structures that Grantee approves in writing as being consistent with the conservation purposes of this Easement;

(iii) temporary or seasonal outdoor activities or events that do not harm the agricultural use, future viability, and related conservation values of the Protected Property herein protected;

(iv) commercial enterprises related to agriculture or forestry including but not limited to *agritourism, processing, packaging, and marketing of farm or forest*

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products, farm machinery repair, and farm wineries.

(v) small-scale commercial enterprises compatible with agriculture or forestry.

Maintenance of existing roads documented on the Baseline Documentation Report is allowed; however, existing roads may not be widened or improved unless widening and improving is within impervious surface limits, approved in advance by the Department, and necessary to carry out the agricultural operations or other allowed uses on the Protected Property.

Fences may be maintained and replaced and new fences installed only in accordance with the ALE Plan and consistent with grassland species management requirements.

(D) *Granting of easements for utilities and roads* – The granting or modification of easements for utilities and roads is prohibited when the utility or road will adversely impact *the protection of the grazing uses, grassland conservation value*, and related conservation values of the Protected Property as determined by the Department in consultation with the Chief of NRCS.

(E) *Surface Alteration* – Grading, blasting, filling, sod farming, earth removal, or any other activity that will disturb the soil surface or materially alter the topography, surface or subsurface water systems, or wetlands of the Protected Property is prohibited, except as follows:

(i) dam construction in accordance with an ALE plan to create ponds for agricultural use, fire protection, or wildlife enhancement, including enhancement through wetland restoration, enhancement or creation;

(ii) erosion and sediment control pursuant to a plan approved by the Department or;

(iii) soil disturbance activities required in the construction of approved agricultural structures, roads and utilities provided that the required alteration has been approved in writing by Grantee as being consistent with the conservation purpose of this Easement; or

(iv) Grazing uses or grassland restoration and conservation activities conducted in accordance with the ALE Plan.

(F) *Oil, Gas, or Mineral Exploration and Extraction* – Mining or extraction of soil, sand, gravel, oil, natural gas, fuel, coal, or any other mineral substance owned by Grantor as of the date of this ALE or later acquired by Grantor, using any surface mining, subsurface mining, or dredging method, from Protected Property is prohibited. Provided however, limited mining activities for materials (e.g., sand, gravel, or shale) used for agricultural operations on the Protected Property is allowed where the extraction of materials used for such agricultural operations is limited, localized, and small with a defined area and acreage identified in EXHIBIT F and does not harm the conservation values or the agricultural uses of the Protected Property.

If a third party owns or leases the oil, natural gas, or any other mineral substance at the time this ALE is executed, and their interests have not been subordinated to this ALE, the Landowner must require, to the greatest extent possible, that any oil, natural gas, and mineral exploration and extraction conducted by such third party is conducted in accordance with this paragraph (F).

Any mineral leases or other conveyances of minerals entered into or renewed after the date of this ALE Deed are subordinate to the terms of this Deed and will incorporate by reference in this Deed.

(G) *Crop Cultivation* - Except for grazing uses and grassland restoration and conservation, the cultivation or production of crops, nonperennial forages for human or domestic animal consumption, crop seed production, or planting of orchards, vineyards, berries, tree farms, or other perennial non-grassland agricultural product is prohibited.

4. Preserving Agricultural Uses: No uses will be allowed that decrease the ALE's protection for the grazing uses and related conservation values or adversely impact the restoration or conservation of the grassland, and related conservation values of the Protected Property. Allowed uses of the Protected Property include, the specific uses allowed in Section I, Paragraph (3)(B) (i)-(iii) and the following activities, subject to the qualifications stated below:

(A) *Agricultural Production* – The production, processing, and marketing of livestock and agricultural products compatible with restoration and conservation of grassland, grazing uses, and related conservation values is allowed provided it is conducted in a manner consistent with the terms of the ALE Plan described in Section I, Paragraph 1.

(B) *Forest Management and Timber Harvest* – Forest management and timber harvesting is allowed, provided it is carried out to the extent practicable, in accordance with current, generally accepted best management practices for the sites, soils, and terrain of the Protected Property. In addition, if the Protected Property contains 40 contiguous acres of forest or 20 percent of the Protected Property is forestland then forest management and timber harvesting must be performed in accordance with a written forest management plan. The forest management plan must be prepared by a professional resource manager, in consultation with the Grantee. A forest management plan will not be required for the following allowed noncommercial activities: (i) cutting of trees for the construction of allowed roads, utilities and structures on the Protected Property, (ii) cutting of trees for trail clearing, (iii) cutting of trees for domestic use as firewood or for other domestic uses by Grantor, (iv) removal of trees posing an imminent hazard to the health or safety of persons or livestock, or (v) removal of invasive species.

(C) *On-Farm Energy Production* – Renewable energy production is allowed for the purpose of generating energy for the agricultural and residential needs of the Protected Property. Renewable energy sources must be built and maintained within impervious surface limits, with minimal impact on the conservation values of the Protected Property and consistent with the purposes of the ALE.

(D) *Grassland Uses of the Protected Property* – Landowner is allowed to graze, hay, harvest for hay and non-crop seed production, mow, construct fire breaks, conduct fire pre-suppression and rehabilitation activities, and conduct common grazing practices, including cultural practices, consistent with the provisions and conservation purposes of this ALE. The term "common grazing practices" means those practices customary to the region where the Protected Property is located related to livestock grazing, forage management, and maintenance of infrastructure required to conduct livestock grazing on the Protected Property. Landowner must not hay, mow, or harvest for seed during certain nesting seasons for birds whose populations are in significant decline as identified in the ALE Plan. Determinations of nesting seasons for birds whose populations are in significant decline and the areas of the property affected by this restriction will be set forth within the ALE Plan for the Protected Property that has been approved by Landowner, Department, and NRCS.

SECTION II - PROTECTION OF THE UNITED STATES' INTERESTS

1. United States Right of Enforcement. Pursuant to 16 U.S.C. Section 3865 et seq., the United States is granted the right of enforcement that it may exercise only if the terms of the ALE are not enforced by the holder of the ALE. The Secretary of the United States Department of Agriculture (the Secretary) or his or her assigns, on behalf of the United States, may exercise this right of enforcement under any authority available under State or Federal law if the Department, or its successors or assigns, fails to enforce any of the terms of this ALE, as determined in the sole discretion of the Secretary.

In the event the United States exercises this right of enforcement, it is entitled to recover any and all administrative and legal costs associated with any enforcement or remedial action related to the enforcement of this Easement from the Landowner, including, but not limited to, attorney's fees and expenses related to Landowner's violations. In the event the United States exercises this right of enforcement, it is entitled to recover any and all administrative and legal costs associated with any enforcement of this Easement from the Department, including, but not limited to, attorney's fees and expenses related to Department's violations or failure to enforce the easement against the Landowner up to the amount of the United States contribution to the purchase of the ALE.

The Department will annually monitor compliance and provide the United States with an annual monitoring report that documents that the Department and Landowner are in compliance with the ALE and ALE Plan. If the annual monitoring report is insufficient or is not provided annually, or if the United States has evidence of an unaddressed violation, as determined by the Secretary, the United States may exercise its right of inspection. For purposes of inspection and enforcement of the ALE, the ALE Plan, and the United States Cooperative Agreement with the Department, the United States will have reasonable access to the Protected Property with advance notice to Department and Landowner or Landowner's representative.

In the event of an emergency, the United States may enter the Protected Property to prevent, terminate, or mitigate a potential or unaddressed violation of these restrictions and will give notice to Department and Landowner or Landowner's representative at the earliest practicable time.

2. General Disclaimer and Landowner's Warranty. The United States, its employees,

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agents, and assigns disclaim and will not be held responsible for Department's or Landowner's negligent acts or omissions or Department's or Landowner's breach of any representation, warranty, covenant, or agreements contained in this ALE Deed, or violations of any Federal, State, or local laws, including all Environmental Laws including, without limitation, those that give rise to liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions, costs of actions, or sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorneys' fees and attorneys' fees on appeal) to which the United States may be subject or incur relating to the Protected Property.

Landowner must indemnify and hold harmless United States, their employees, agents, and assigns for any and all liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions and costs of actions, sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorneys' fees and attorneys' fees on appeal) to which United States may be subject or incur relating to the Protected Property, which may arise from, but are not limited to, Landowner negligent acts, omissions, or breach of any representation, warranty, covenant, agreements contained in this Agricultural Land Easement Deed or violations of any Federal, State, or local laws, including all Environmental Laws.

3. Environmental Warranty. Landowner warrants that it is in compliance with, and will remain in compliance with, all applicable Environmental Laws. Landowner warrants that there are no notices by any governmental authority of any violation or alleged violation of, noncompliance or alleged noncompliance with, or any liability under, any Environmental Law relating to the operations or conditions of the Protected Property. Landowner further warrants that it has no actual knowledge of an undisclosed release or threatened release of Hazardous Materials, as such substances and wastes are defined by applicable Federal and State law.

Furthermore, Landowner warrants the information disclosed to the Department and United States regarding any past violations or non-compliance with Environmental Laws and associated remedial actions, or any past releases of Hazardous Materials and any associated remedial actions is complete and accurate.

Moreover, Landowner hereby promises to hold harmless and indemnify Department and the United States against all litigation, claims, demands, penalties and damages, including reasonable attorneys' fees, arising from or connected with the release or threatened release of any hazardous materials on, at, beneath or from the Protected Property, or arising from or connected with a violation of any Environmental Laws by Landowner or any other prior owner of the Protected Property. Landowner indemnification obligation will not be affected by any authorizations provided by Department or the United States to Landowner with respect to the Protected Property or any restoration activities carried out by Department at the Protected Property; provided, however, that Department will be responsible for any Hazardous Materials contributed after this date to the Protected Property by Department.

"Environmental Law" or "Environmental Laws" means any and all Federal, State, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, guidelines, policies, or requirements of any governmental authority regulating or imposing standards of liability or

standards of conduct (including common law) concerning air, water, solid waste, hazardous materials, worker and community right-to-know, hazard communication, noise, radioactive material, resource protection, subdivision, inland wetlands and watercourses, health protection, and similar environmental health, safety, building, and land use as may now or at any time hereafter be in effect.

“Hazardous Materials” means any petroleum, petroleum products, fuel oil, waste oils, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous wastes, hazardous substances, extremely hazardous substances, toxic substances, toxic chemicals, radioactive materials, infectious materials, and any other element, compound, mixture, solution, or substance that may pose a present or potential hazard to human health or the environment.

4. Extinguishment, Termination, and Condemnation. The interests and rights under this Agricultural Land Easement may only be extinguished or terminated with written approval of the Department and the United States. Due to the Federal interest in this ALE, the United States must review and approve any proposed extinguishment, termination, or condemnation action that may affect its Federal interest in the Protected Property.

With respect to a proposed extinguishment, termination, or condemnation action, the Department and the United States stipulate that the fair market value of the ALE is _____ percent, hereinafter the “Proportionate Share,” of the fair market value of the land unencumbered by this ALE. The Proportionate Share will remain constant over time.

If this ALE is extinguished, terminated, or condemned, in whole or in part, then the Landowner must reimburse Department and the United States an amount equal to the Proportionate Share of the fair market value of the land unencumbered by this ALE. The fair market value will be determined at the time all or a part of this ALE is terminated, extinguished, or condemned by an appraisal that meets the Uniform Standards of Professional Appraisal Practice (USPAP) or Uniform Acquisition Standards or Federal Land Acquisition (UASFLA). The appraisal must be completed by a certified general appraiser and be approved by the Department and the United States.

The allocation of the Proportionate Share between the Department and the United States will be as follows: (a) to the Department or its designee, _____ percent of the Proportionate Share; and (b) to the United States _____ percent of the Proportionate Share. Until such time as the Department and the United States receive the Proportionate Share from the Landowner or the Landowner successor or assign, the Department and the United States each have a lien against the Protected Property for the amount of the Proportionate Share due each of them. If proceeds from termination, extinguishment, or condemnation are paid directly to Department, the Department must reimburse the United States for the amount of the Proportionate Share due to the United States.

5. Amendment. This ALE may be amended only if, in the sole and exclusive judgment of the Department and United States, by and through the Chief of NRCS, such amendment is consistent with the purposes of this ALE and complies with all applicable laws and regulations. The Department must provide timely written notice to the Chief of NRCS of any proposed amendments. Prior to the signing and recordation of the amended ALE, such amendments must

be mutually agreed upon by the Department, Landowner, and United States, by and through the Chief of NRCS. Any purported amendment that is recorded without the prior approval of the United States is null and void

END OF EXHIBIT E

EXHIBIT F

Paleontological Resources

The extraction of paleontological resources is conditioned and limited as follows:

1. Prior to commencing excavation of a major paleontological find, or the excavation of an area larger than one contiguous acre on the Land, Landowner shall submit to the Department an Operating Plan describing the proposed:

- Location, size, and boundary of disturbance or excavation area;
- Size of footprint for all associated activities;
- Access routes;
- Timing of excavation season;
- Reclamation plan that includes methods, materials, and timeline;
- Compatibility with hunting and other public use of the property.

Before any surface disturbance as described in Paragraph 1 occurs upon the Land the Landowner must obtain the written approval of the Operating Plan by FWP's Wildlife Division Administrator or FWP's Director. Such approval shall not be unreasonably withheld. In the event that the Operating Plan is not approved by FWP, FWP shall make good faith efforts to work with Landowner to develop an acceptable Operating Plan.

3. Excavation shall not exceed a total of five acre of the Land whether contiguous or non-contiguous. No excavation shall be operated in the same location for more than three continuous years. FWP may waive such restrictions pursuant to the Operating Plan.

4. Prior to any surface disturbance of the property, Landowner shall segregate and store the top 18 inches of topsoil, or all available topsoil, whichever is applicable to the site.

5. Landowner shall be responsible for control of noxious weed infestations that result from paleontological activities until infestation no longer exists. Landowner shall exercise reasonable care in the conduct of its research activities to reduce the likelihood or impact of noxious weed infestation. Landowner shall further comply with the Montana County Noxious Weed Management Act, § 7-22-2101 MCA, *et seq.*, as follows:

If the Landowner disturbs vegetation on the Land for any reason related to paleontological excavation, Landowner shall reclaim and revegetate the disturbed area. Landowner shall submit to the Department a written plan specifying the methods to be used to accomplish revegetation. The plan must describe the time and method of seeding, fertilization, proposed plant species, use of weed-free seed, and the weed management procedures to be used. The plan must receive the Department's **Prior Approval** before being implemented by the Landowner. Landowner shall re-grade any disturbed areas to their approximate original contour, apply topsoil, and revegetate all disturbed areas with an approved seeding mixture to the satisfaction of FWP. If the first seeding

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of compatible grass species does not germinate to the satisfaction of FWP, Landowner shall reseed those areas remaining open to erosion and weeds.

6. No paleontological activities shall be conducted during the Montana big game rifle hunting season without the express written consent of FWP. Such consent may occur pursuant to the Operating Plan.

7. Prior to any surface disturbing activity, Landowner shall submit a reclamation bond to be held by FWP to ensure the reclamation of the disturbed lands as described herein. The bond shall be equal to the inflation-adjusted appraised value of the Easement of the acres to be disturbed by Landowner and shall be specified in the Operating Plan.

8. Reclamation of areas one acre or less will be initiated within one year of completion of excavation. In all cases, reclamation shall be initiated on areas one acre or less within three years of disturbance. FWP may waive such restrictions.

END OF EXHIBIT F

After Recording, please return to:
Department of Fish, Wildlife and Parks
Land Unit
P.O. Box 200701
Helena, MT 59620-0701

Horse Creek Complex 2 (FWP)

DEED OF CONSERVATION EASEMENT

THIS DEED OF CONSERVATION EASEMENT ("Easement") is granted this _____ day of _____, 201__, by Springhill Ranch, a Montana Corporation, 618 Ranch Access South, Wibaux, Montana 59353-9060 ("Landowner") to the Montana Department of Fish, Wildlife and Parks, an agency of the State of Montana, whose address is 1420 East Sixth Avenue, P.O. Box 200701, Helena, Montana 59620-0701 ("Department").

The following Exhibits are attached hereto and incorporated into this Deed of Conservation Easement by this reference.

Exhibit A - Legal Description of the Horse Creek Complex 2 (FWP)
Conservation Easement

Exhibit B - Map of the Land

Exhibit C - FWP Minimum Standards for Grazing Livestock

Exhibit D - Map of Existing Development Areas, Seeded Areas, and Cultivated Areas

Exhibit E - Paleontological Resources

I. RECITALS

- A.** The people of the State of Montana recognize that certain native plant communities and important fish and wildlife habitat are worthy of perpetual conservation, and have authorized the Department to acquire perpetual conservation easements, as described in § 76-6-101 *et seq.*, Montana Code Annotated ("MCA"), from willing Landowners by voluntary, cooperative means to conserve native plant communities, habitat and other natural resource of value.
- B.** The Landowner is the owner of certain real property in Wibaux County and Dawson County, Montana (the "Land"), legally described in Exhibit A, attached hereto and incorporated herein by this reference. The Conservation Easement Boundary is depicted in Exhibit B.

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- C. Two separate and distinct overlapping Deeds of Conservation Easement encumber all or a portion of the Horse Creek Complex. The first easement (Horse Creek Complex Deed of Conservation Easement 1) encompasses approximately 10,536.49 acres of land within the Horse Creek Complex, funded in part through the Agricultural Conservation Easement Program, 16 U.S.C. § 3865, *et seq.* This program facilitates and provides funding to the Department for the purchase of an Agricultural Land Easement ("ALE") which is depicted on Exhibit B and referred to there as the "ALE Area." For purposes of clarity, this easement shall be referred to in this document as the "ALE." By funding this easement, the USDA-NRCS recognizes that a portion of the Land provides agricultural values worth conserving in perpetuity.

This second Easement (Horse Creek Complex Deed of Conservation Easement 2) covers the entire 15,376.36-acre property described in Exhibit A and depicted on Exhibit B. This Easement complements the ALE, by encumbering additional acreage and acquiring additional rights from the Landowner not acquired through the ALE. Thus, the land is encumbered by both the ALE and also this second larger Easement. This Easement is in addition to the ALE and in no way amends, modifies, or supersedes the terms of the ALE.

- D. The Land possesses significant agricultural values and communities of native plants, fish and wildlife habitat, natural and scenic open-space lands, and public recreational opportunities, all of which are collectively termed "Conservation Values" and are valuable to the people of Montana and worthy of perpetual conservation.
- E. The Conservation Values of the Land can be protected in perpetuity by the Landowner and the Department through the grant of a conservation easement to the Department with the Landowner retaining fee title to the Land and overall management of the Land consistent with the terms and conditions of this Easement.
- F. Landowner and Department agree that the Conservation Values of the Land will be preserved and maintained by the continuation of land use patterns that do not significantly impair or interfere with the protection and preservation of these Conservation Values, in perpetuity.
- G. The Land provides important opportunities for public recreational hunting and fishing, and trapping, and wildlife viewing and the Landowner and the Department specifically intend that this Easement afford public hunting access for recreational purposes and for wildlife management purposes.
- H. The Landowner intends, by executing this Easement, freely, without restriction, and voluntarily, to grant to the Department this Easement, and its associated rights, to preserve and protect the Conservation Values in perpetuity.

II. AGREEMENT

In consideration of the sums paid by the Department, and in further consideration of the recitals, mutual covenants, and terms contained in this Easement and pursuant to the laws of the State of Montana and in particular to the Open-Space and Voluntary Conservation Easement Act, § 76-6-

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101, *et seq.*, MCA; the Department's wildlife habitat acquisition authority, § 87-1-209, *et seq.*, MCA; and Title 70, Chapter 17, MCA, the Landowner voluntarily grants and conveys to the Department, and the Department accepts, a conservation easement in perpetuity, with warranties of title, consisting of the following rights and restrictions over and across the Land described in Exhibit A and shown on Exhibit B.

A. PURPOSES

1. The purpose of this Easement is to preserve, protect, and restore, upon mutual agreement with the Landowner, in perpetuity, the Conservation Values of the Land, including but not limited to the habitat the Land provides for a variety of wildlife species, and to prevent any use that will interfere with the Conservation Values of the Land. The Landowner and the Department intend this Easement to limit the uses of the Land to those activities that are consistent with the Conservation Values and the purposes of the Easement.
2. An additional specific purpose of this Easement is to provide to the Department pursuant to its authority to acquire interests in land at § 87-1-209, MCA, on behalf of the public, the right of reasonable access to the Land for recreational uses, in accordance with the terms and conditions set forth in Section II.B.5 below.
3. If one or more of the purposes of this Easement may no longer be accomplished, such failure of purpose shall not be deemed sufficient cause to terminate the entire Easement as long as any other purpose of the Easement may be accomplished. The Department and Landowner recognize that changes in economic conditions, in agricultural technologies, in accepted farm, ranch and forest management practices, and in the situation of the Landowner may result in an evolution of agricultural, silvicultural, and other uses of the Land, and such uses are permitted provided they are and remain consistent with the Purposes of this Easement.
4. Pursuant to the terms of § 76-6-107, MCA, the Land preserved by this Easement as natural land, may not, except as specifically provided herein and pursuant to statute, be converted or diverted to any uses other than those provided for by this Easement.

B. RIGHTS CONVEYED TO THE DEPARTMENT

The rights conveyed to the Department in perpetuity by this Easement are the following:

1. **Identification and Protection.** To identify, preserve, protect, and enhance by mutual agreement, in perpetuity, the Conservation Values; subject, however, to the rights reserved by the Landowner in this Easement in Section C below, and further subject to all third-party rights of record in and to the Land that are not subordinated to the terms and conditions of this Easement.
2. **Access.** Upon **Prior Notice** to the Landowner, to enter upon and to inspect the Land; to observe, study, and make scientific observations of the Land's wildlife, wildlife habitat

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and ecosystems; and to establish and maintain vegetation monitoring transects and enclosures, all to assure that the Department's rights in the Land are maintained and all in a manner that will not damage growing crops or unreasonably interfere with the use of the Land by the Landowner. The Department shall also have the right to enter the Land to enforce the rights granted to the Department in this Easement, and Landowner expressly conveys to the Department a right of immediate entry onto the Land if, in the Department's sole judgment, such entry is necessary to prevent damage to or destruction of the Conservation Values protected by this Easement. Aside from the rights of access granted in this paragraph and in Paragraph II.B.5., this Easement does not grant the Department, nor the public, any rights to enter upon the Land.

3. **Injunction and Restoration.** To enjoin any activity on the Land or use of the Land which is inconsistent with the purposes and terms of this Easement, or which may have a significant adverse impact on the Conservation Values, and to enforce the reasonable restoration of any Conservation Values that may be damaged by such activities.
4. **Markers.** To place and replace, during inspections authorized above, small markers to identify boundaries, corners, and other reference points on the Land. Landowner shall not remove such markers without **Prior Approval** to the Department and without the Department's consent, which will not be unreasonably denied, as provided in Section II.G below.
5. **Public Recreational Access.** The right, on behalf of the general public, of access for the purpose of recreational hunting, trapping, and wildlife viewing on the Land and across the Land to adjacent public land as provided for in the Management Plan and in accordance with the following terms and conditions:
 - a. The Landowner has the right to manage the distribution of the public on the Land to address reasonable concerns for the safety of persons and property, including livestock. The landowner may require the public to obtain permission prior to entering the Land.
 - b. The public may hunt game animals and game birds of all sex and age classes in accordance with hunting regulations adopted by the State of Montana.
 - c. When requested by members of the public during all hunting seasons set by the state of Montana, Landowner must permit a minimum of 600 hunters on the Land per year ("hunter days") on a first-come, first-served basis. The 600 hunter days includes the 400 hunter days provided for in the Horse Creek Complex 1 (ALE) Conservation Easement recorded _____, for a total minimum of 600 hunter days on the Land per year.
 1. A "hunter day" is defined as one hunter hunting on the Land for one day, or any part of one day, measured from midnight to midnight.

2. The Landowner, Landowner's immediate family, Landowner's shareholders, partners, employees, and immediate family of shareholders, partners, and employees of the Landowner are not defined as members of the general public by this Easement for the purpose of calculating "hunter days". The term "immediate family" is defined to include spouses, children, in-laws, and parents.
3. Public access for hunting must be managed on a non-preferential and nondiscriminatory basis.
- d. The hunting seasons during which the public is allowed access to the Land for hunting under this paragraph must be set and may be changed from time to time by the State of Montana in accordance with applicable laws, regulations, and policies.
- e. The grant of hunting rights by the Landowner to the Department contained in this Paragraph II.B.5. shall be deemed exclusive to the Department for the benefit of the public and are specifically conveyed pursuant to: (i) § 70-17-102(1), MCA, and thereby this grant creates a servitude running with the Land, and (ii) the Montana Open Space Land and Voluntary Conservation Easement Act, § 76-6-101 *et seq.*, MCA, and thereby this grant creates a conservation easement for the purpose of protecting significant open-space land protected and preserved for recreational purposes under § 76-6-104(3)(a), MCA.
- f. Those members of the public who have access to the Land pursuant to Paragraph II B.5 shall also have motor vehicle access over and across county roads and shall park in those designated areas referred to as "Parking Areas" as shown and described in the Management Plan. There shall be a minimum of 3 Parking Areas, 2 of which shall be located in the northern portion of the Land, and 1 in the southern portion of the Land. The Parking Areas shall be spaced a minimum of 1 mile apart, and provide adequate parking to accommodate hunters during the fall hunting season (see Paragraph II.B.5.d. above), approximately 5.5 spaces per Parking Area. The public may not drive off these roads for any purpose, except with the express permission of the Landowner or the Landowner's agent. The public may travel on foot from the Parking Areas or from other publicly accessible areas to hunt, trap, and/or view wildlife throughout the Land for the purposes and in the manner prescribed in this Paragraph II.B.5. of this Easement. Furthermore, the public may travel by foot from the Parking Areas to access adjacent publicly accessible lands which allow public recreational use. Upon agreement with the Landowner, the Department may open additional roads and parking areas as shown and described in the Management Plan. All roads and Parking Areas used for access by the public will be shown in the up-to-date Management Plan.
- g. Furthermore, the Department reserves the right to temporarily restrict the public's access to the Land as deemed necessary or appropriate to protect the Land, wildlife or wildlife habitat, or the public.
- h. Notwithstanding any provision that may be construed to the contrary, Landowner may deny access to anyone who is not conducting, or has not in the past conducted,

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herself or himself in a prudent, responsible, and safe manner and denial of access for this reason shall not be deemed preferential or discriminatory.

i. Public access for trapping and wildlife viewing will be directed by the Management Plan. Those members of the public participating in these activities will not count toward the minimum hunter days outlined in Paragraph II B.5. above.

j. Except as specifically set forth in this Paragraph II.B.5., this Easement does not grant public access to any portion of the Land for any reason. This Easement does not grant any public right of overnight camping.

k. The Landowner may participate in programs offered by the Department or other entities intended to reimburse or compensate the Landowner for the impacts of hunter use of the Land. However, the Landowner and the Department acknowledge that any such hunter-impact program is administered separately from this Easement; that such program may or may not persist through time; that such program may or may not be offered for the Landowner's participation; and that nothing in this Easement provides any assurance that the Landowner will be offered the opportunity for or be accepted into any such program.

C. LANDOWNER'S RIGHTS

The Landowner reserves to themselves, and to their heirs, successors and assigns, all rights accruing from ownership of the Land, including the right to enter and manage the Land and engage in or permit others to engage in all uses of the Land that (a) are not expressly conveyed to the Department; (b) are not prohibited or restricted by this Conservation Easement; (c) are consistent with the purposes of this Conservation Easement; and (d) do not harm the Conservation Values of the Land. Some of these reserved rights identified in this Section II.C are subject to specified conditions or to the requirement of, and procedures for, obtaining the Department's **Prior Approval** or **Prior Notice** as described in Paragraph II.G. of this Easement. Without limiting the generality of the previous statements and subject to the restrictions on Landowner's activities in this Conservation Easement set forth in Paragraph II.D. hereof, the Landowner expressly reserves the following rights;

1. **Livestock Grazing.** The right to raise, pasture and graze livestock, and the right to lease pasture to another agricultural operator to raise, pasture, and graze livestock; provided that any livestock grazing is consistent with a grazing system as approved in writing by the Department as part of the Management Plan described in Paragraph II.E. of this Easement; is in accordance with the "FWP Minimum Standards for Grazing Livestock" more particularly described in Exhibit C attached hereto and incorporated herein by this reference; and is consistent with other specific terms in this Easement governing livestock grazing. The Management Plan provides the details of livestock grazing on the Land, including schematic diagrams of the pasture systems to be used. Any changes in the Management Plan must be adopted in a manner consistent with Paragraph II.E. in this Easement, and any grazing system so adopted or revised must

continue to conform to the "FWP Minimum Standards for Grazing Livestock" as described in Exhibit C. For the purposes of this Easement, livestock is defined as cattle; provided, however, that other species of grazing animal may be substituted for cattle with **Prior Approval**.

2. **Agricultural Activities.** The right to use the Land and to use equipment on the Land for agricultural purposes and to manage habitat for wildlife, all in a manner consistent with the following provisions:
 - a. The areas cultivated at the time the Easement is granted and shown in the Baseline Report may continue to be cultivated according to the terms of the Management Plan. If the cultivated land is used for grazing, livestock grazing will comply with the terms of the Easement and the Management Plan.
 - b. With Prior Notice, and as agreed to in the Management Plan, the right to seed those areas shown as "seeded areas" on Exhibit D (approximately 327.11 acres) for grazing uses and grassland restoration and conservation. Cultivation of seeded areas is prohibited.
 - c. Areas not designated in the Baseline Report as "Residential Development Areas", "cultivated" or "seeded areas" shall be considered "rangeland" and may be used for livestock grazing, consistent with the provisions of Paragraph II.C.1.
3. **Leasing the Land.** With Prior Notice, the Land may be leased to another agricultural operator for agricultural purposes, provided that:
 - a. A written lease must be entered into by the Landowner and the lessee(s);
 - b. The lease must require the lessee to follow the terms of the Easement, as well as any applicable provisions of the Management Plan; and,
 - c. A copy of the executed lease must be provided to the Department.
 - d. Landowner retains responsibility under this Easement for ensuring compliance with the terms of the Easement and Management Plan by lessee(s).
4. **Habitat Restoration and Enhancement.** The right to conduct fish and wildlife habitat restoration and enhancement projects, in cooperation with the Department and consistent with the Management Plan. Any habitat restoration or enhancement project not specifically provided for in the Management Plan requires **Prior Approval**.
5. **Water Resources and Facilities.** The right to use, develop, and maintain water resources, including stock water ponds, ditches, irrigation structures and equipment, canals, pumps and pump sites, pipelines and water wells, necessary for grazing, wildlife, habitat restoration and improvement, and all agricultural purposes that are allowed by this Easement; provided, however, any new water development or change in water use or water distribution that would have a significant adverse impact on a perennial or

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ephemeral river or stream, streamflow, wetlands, riparian vegetation, or wildlife habitat, wildlife movement, or migration on or through the Land is prohibited. Maintenance of canals, ditches, culverts and drains – including the periodic removal of vegetation as necessary to keep water management facilities in operational condition – is not a violation of this Easement. Additionally, it is understood that maintenance of reservoirs, ditches and other water-resource facilities may involve removal and deposit of accumulated soil and organic matter, and the Department hereby agrees that such soil and organic matter may be removed from the water-resource facilities and deposited on the Land at or near the location of the removal activity in a manner customary to such operations and consistent with the Conservation Values.

6. **Residential Development Areas.** The purpose of the Residential Development Areas is to allow Landowner flexibility in the use of the residences and outbuildings and to cluster residential uses and other non-agricultural structures on the Land. If necessary, wells and drain fields and buried propane tanks and associated buried pipelines may be located outside of the Residential Development Areas.

a. There are presently two existing Residential Development Areas on the Land as shown in Exhibit D.

b. **With Prior Approval**, the Landowner may delineate a third Residential Development Area no more than 10 acres in size. Landowner must submit the proposed location and dimensions of said new Residential Development Area to the Department.

c. If a new Residential Development Area is approved pursuant to this Paragraph II.C. 6, the Department may file in the public records of the affected county a “Notice of Exercise of Reserved Development Right” that documents the location of the approved new Residential Development Area for the information and benefit of Landowner, Department, and their respective successors and assigns, and the public.

d. No more than three Residential Development Areas are permitted on the Land.

7. **Residential Structures and Outbuildings.** Landowner reserves the right to reside in, and to construct, maintain, repair, remodel, remove and replace up to a maximum of four single-family residences, including the two existing residences. Residences must be located in Residential Development Areas described in Paragraph II.C.6. above. **Prior Notice** is required to build or move residences or outbuildings.

a. Landowner reserves the right to construct, maintain, repair, remove, and replace additional outbuildings and commercial buildings within the Residential Development Area.

b. **Outbuildings.** For the purposes of this Easement, the term “Outbuildings” means those structures that are built within the Residential Development Areas pursuant to this Paragraph II.C.7. and are not used for human habitation but which are appurtenant to the permitted residences, including, but not limited to, offices, recreational structures,

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greenhouses, root and wine cellars, gazebos, pools, hot tubs, sheds, workshops, residential fences, commercial structures and garages.

c. Temporary recreational residential shelters. Landowner may place and make use of tents, tarps, yurts, tepees, campers, or other shelters without permanent foundations upon the Land on a temporary basis from time to time for personal use of Landowner and invited guests.

8. **Agricultural Structures.** Landowner retains the right to, maintain, repair, remodel, remove, and make additions to, and replace the following agricultural structures on the Land:

a. Agricultural structures that are not used for human habitation, including, but not limited to barns, chicken houses, shelters, sheds, machine sheds, corrals, livestock loading docks, culverts, bridges, ditches, and irrigation structures. Barns for uses other than agriculture uses must be located in the Residential Development Areas.

b. With **Prior Approval**, the right to construct new agricultural structures on the Land.

9. **Man-made Structures.** Landowner has the following rights pertaining to man-made structures (in addition to those rights for structures and facilities for water use and irrigation development that are provided in Paragraph II.C.5.):

a. The right to remove, maintain, or repair existing fences, corrals and other livestock containment structures.

b. With **Prior Notice** the right to construct, renovate, or replace fences (including corrals and other livestock containment structures) necessary for generally accepted agricultural land management purposes. Any new or renovated fence or other barrier that the Department determines would significantly impact wildlife habitat or wildlife movement or migration on or through the Land must be “**wildlife friendly**” as provided in the Management Plan. This does not apply to corrals, fences, windbreaks, and other structures necessary to contain livestock or protect stored feed.

10. **Roads.** To construct new and maintain existing roads and bridges or waterway crossings as herein permitted. Any road, bridge, or waterway crossings constructed shall be sited and maintained so as to minimize adverse impacts on the Conservation Values. Any new road construction (but not including maintenance of existing roads) shall be subject to **Prior Approval** of the Department, as set forth in Section II.G of this Easement. The Department’s approval shall be contingent on confirmation that (a) the road’s intended purpose is permitted by this Easement, (b) its location will not result in significant soil erosion, and (c) the new road shall not materially disturb wildlife or wildlife habitat or other protected Conservation Values. The Landowner’s written request for approval shall include a construction plan describing the purpose of the road, its location on a topographic map and, to the extent deemed necessary by the Department, discussion of the following: road grade, drainage, erosion/sedimentation impacts and mitigating efforts,

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areas of cut and fill, and special concerns like culvert placement, bridges, fords, buffer strips between roads and streams, and fish and wildlife impacts and mitigating efforts. Seeding and reestablishment of cover vegetation, which is native or is representative of adjacent perennial plant species, and control of noxious weeds on exposed cuts, fills and banks is required on any new road construction.

11. **Noncommercial Recreational Use.** Landowner reserve to themselves and to their immediate family the right to use the Land for noncommercial recreational purposes, including hunting, in accordance with Section II.B.5. and Section II.D.9.

12. **Utilities.**

a. Existing Utilities. Landowner retains the right to maintain, repair, and upgrade utilities existing on the Land at the time of the grant of this Easement, including utility structures, lines, conduits, cables, wires, or pipelines ("Utilities").

b. New Utilities on the Land. Subject to **Prior Approval**, Landowner retains the right to install and construct new Utilities upon, over, under, within, or beneath the Land to existing and subsequently constructed structures and improvements that are expressly permitted on the Land by this Easement. The Department will require the Landowner to submit a Utility Plan as outlined in Paragraph II.C.12.d. ("Utility Plan") below.

c. New Utilities serving adjacent properties. Subject to **Prior Approval**, the Landowner retains the right to construct new Utilities and grant any associated Utility right-of-way easement serving adjacent properties. The Department will require the Landowner to submit a Utility Plan as outlined in Paragraph II.C.12.d. below.

d. Utility Plan. Landowner shall contact the Department prior to the preparation of the Utility Plan to obtain the required information to be included in such Plan that the Department determines to be relevant. Landowner and the Department will mutually determine the completeness of the Utility Plan and its adherence to the general and specific intentions of this Easement prior to the Department's approval of the Plan. Any new and expanded utility services and associated right-of-way easements must be memorialized in a written agreement that is recorded in the public records of affected counties, signed by the Landowner, the Department, and the utility service provider prior to construction.

13. **Renewable Energy Generation for Use On the Land.** With the **Prior Approval** of the Department, Landowner reserves the right to construct wind, solar, hydropower and other types of renewable energy generation facilities ("renewable energy production") solely for use on the Land, except that any incidental surplus energy may be sold commercially for use off the Land or credited to Landowner's utility service. Design and location of facilities and fixtures associated with renewable energy generation is subject to **Prior Approval** of the Department.

14. **Pesticide Application and Weed Management.**

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a. Landowner shall have the right to use legally authorized pesticides (as defined by MCA 80-8-102) on seeded areas as described in Paragraph II.C.17. and shown on Exhibit D, and Residential Development Areas as described in Paragraph II.C.6. Except as provided in Paragraph II.C.14.b and d. below, **Prior Approval** is required to use pesticides on the Land on other than seeded areas and Residential Development Areas. Any pesticide use should be only in the amount and frequency constituting the minimum necessary to accomplish reasonable control of the targeted pest species.

b. **Weed Management.** The right to use herbicides for control of noxious weeds, as defined by the state of Montana or other lawful authority with jurisdiction, and other invasive nonnative plants. Such use must be in the amount and frequency of application constituting the minimum necessary to accomplish reasonable control of weeds, and in a manner that will minimize damage to native plants. The Landowner shall have the right to use biological control agents for weed control, provided that these biological agents have been approved for the specified use by appropriate governmental agencies; and further provided that livestock used for weed control shall comply with the grazing system in Exhibit C unless otherwise authorized by **Prior Approval**.

c. **Prior Approval** is required for aerial application of any pesticide or biological control agent on the Land.

d. Landowner shall have the right to use legally authorized pesticides that are directly applied to livestock for health purposes.

15. **Regulation of Public Use.** The right to regulate public use of the Land at all times; subject, however, to the right of public hunting, trapping, and wildlife viewing access granted to the Department in Paragraph II.B.5.

16. **Oil, Gas, or Mineral Exploration and Extraction.** Mining or extraction of soil, sand, gravel, oil, natural gas, fuel, coal, or any other mineral substance owned by Landowner as of the date of the Easement or later acquired by Landowner, using any surface mining, subsurface mining, or dredging method, from the Land is prohibited; provided however, with **Prior Approval**, limited mining activity for materials (e.g., sand, gravel, scoria, or shale) used for agricultural operations on the Land is allowed where the extraction of materials used for such agricultural operations is limited, localized, and does not harm the Conservation Values or the agricultural uses of the Land.

a. The existing extraction sites will be identified in the Baseline Report.

b. No more than two areas of no more than two acres each may be used at any time. Extraction locations must be reclaimed within one year of cessation of use. Seeding and reestablishment of cover vegetation, which is native or is representative of adjacent perennial plant species, and control of noxious weeds is required.

c. If a third party owns or leases the oil, natural gas, or any other mineral substance at the time this Easement is executed, and their interests have not been subordinated to the

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Easement, the Landowner must notify the Department as soon as practical after Landowner becomes aware of any proposed exploration or extraction activity by such third party. Landowner and the Department shall confer to review the proposed activity and to determine ways to best mitigate any potential impact on the Land and the Conservation Values of the proposed activities. Landowner and the Department shall subsequently cooperate in an effort to influence the third party to adopt recommended mitigating measures in the third party's exploration and development activities. Nothing herein shall require the Landowner to indemnify the Department for exploration or extraction activity by any third-party mineral interest owner.

17. Subdivision and Conveyance of Land Ownership. For the purposes of this Easement:

- a. The Land shall be considered to comprise one unit, as described in Exhibit A and shown on Exhibit B. The Landowner and the Department mutually intend that the entire Land shall be maintained in unified title as a single unit. Further, for the purposes of this Easement, any other parcel designation existing at or subsequent to the date of the conveyance of this Easement, including but not limited to government lots, aliquot parts, and certificates of survey, are considered to be an integral part of the Unit within which they are located, and may not be divided, subdivided, separated or conveyed separately from the entirety.
- b. The Landowner may sell, grant, donate, bequeath or otherwise convey the Land in its entirety to another party.
- c. Landowner shall provide the Department with **Prior Notice** before entering into an agreement that would commit the Landowner to convey the Land to another party. The purpose of this notice is to afford the Department with the opportunity to review the proposed conveyance document and any associated legal agreement to ensure consistency with the provisions of this Paragraph II.C.17.

18. Industrial or Commercial Uses. The right to:

- a. Conduct agricultural production and related activities as provided for in this Easement and the Management Plan.
- b. With **Prior Approval** and subject to the terms of Exhibit F, where applicable, conduct temporary or seasonal outdoor activities or events, as provided in the Management Plan.
- c. With **Prior Approval**, and provided it does not significantly increase vehicular traffic to or through the Land, operate home-based businesses, small-scale manufacturing of products and distribution of those products, small-scale commercial enterprises related to agriculture including but not limited to agri-tourism, processing, packaging, and marketing of farm or forest products, farm and machinery repair, and small-scale commercial enterprises compatible with agriculture.

D. RESTRICTIONS ON LANDOWNER'S ACTIVITIES

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Any activity on or use of the Land that is inconsistent with the purposes and terms of this Easement is prohibited. Without limiting this general prohibition, the following activities and uses are expressly prohibited or restricted.

1. **Vegetation Removal.** The destruction, removal, control, or manipulation of native vegetation, sagebrush, planted nesting cover, or permanent cover is prohibited, except as part of or incidental to the agricultural activities and other land uses specifically allowed by this Easement or as specifically provided for in the Management Plan. The removal of live or standing dead trees is prohibited without **Prior Approval**; however, the Landowner does not require Prior Approval to remove trees and other woody vegetation that pose a threat to human safety, travel ways, or structures.
2. **Wetland and Riparian Areas.** For the purpose of this conservation easement:
 - a. Riparian areas are defined as vegetation zones adjacent to rivers, streams, and wetlands including banks and adjacent uplands and are influenced by adjacent flowing or standing water or by a shallow water table caused by river-associated groundwater. Wild hay fields, cultivated fields, active river channels, or eroded river banks devoid of effective wildlife cover, are not considered riparian areas.
 - b. The draining, filling, dredging, leveling, burning, ditching, or diking of any natural or manmade wetland or riparian area, streambank stabilization, or any other activity that significantly impacts any such area is prohibited. However, wetland areas may be restored, developed or enhanced, by either the Landowner or the Department, to benefit wildlife and to further the purposes of the Easement as a part of a restoration activity approved under Paragraph II.C.3.
 - c. The control, removal, or manipulation of any trees, willows, or other woody vegetation by any means is prohibited, except as needed for the ordinary course of maintaining fences and ditches provided for and allowed under this Easement or as may be allowed by the Department as part of an approved plan specifically directed to improve fish or wildlife habitat.
3. **Subdivision.** The legal or de facto division or subdivision of the Land is prohibited, which shall include, but shall not be limited to, any subdivision, short subdivision, platting, binding site plan, testamentary division, or other process by which the Land is divided into lots or in which legal or equitable title to different portions of the Land are held by different owners. The Landowner may not indirectly subdivide all or any part of the Land through the allocation of property rights among partners, shareholders, or members of any legal entity (including a homeowner's association), the creation of a horizontal property regime, interval or time-share ownership arrangement, leasing, partitioning among tenants-in-common, judicial partition, or by any other means. The Landowner and the Department mutually intend that the entire Land shall be maintained in unified title as a single unit. Notwithstanding any other provision of this Paragraph to the contrary, however, the Landowner may lease the Land for agricultural purposes

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subject to the terms of this Easement and the Management Plan described in Paragraph II.E. of this Easement.

The Land may not be used as open or natural space or parkland for any subdivision or development purposes or requirements on land not covered by this Easement, nor may the Landowner transfer any development or subdivision rights separate from the Land.

5. **Water Rights.** Landowner will not transfer, encumber, sell, lease, or otherwise separate water rights from the Land. If Landowner receives notice or becomes aware of a situation under which water rights may be lost from the Land, Landowner shall notify the Department, and the parties may work cooperatively to address the situation.
6. **Agricultural Chemicals.** The use of herbicides, biological control agents, and pesticides in a manner other than as provided for in Paragraph II.C.14 is prohibited.
7. **Roads.** The construction of roads in a manner other than as provided for in Paragraph II.C.10. is prohibited.
8. **Land Cultivation.** The cultivation or farming of any portion of the Land is prohibited, except as allowed for in Paragraph 2.C.2, or for habitat restoration or enhancement activities authorized pursuant to the terms of this Easement.
9. **Commercial Recreation.** The sale or lease of access to the Land for hunting, fishing, trapping, or wildlife viewing purposes, whether or not as a part of a commercial outfitting or guiding business, is prohibited. Operating a commercial hunting, fishing, trapping, or wildlife viewing operation, or charging fees (sometimes known as trespass fees) for hunting, fishing, trapping, or wildlife viewing on the Land or for access across the Land to reach public land or other private land, is prohibited.
10. **Mineral Exploration and Extraction.** Landowner may not engage in, authorize, or contract for any exploration for, or development and extraction of minerals, coal, ore, bentonite, oil and gas, other hydrocarbons, soils, rock, sand, gravel, or similar materials, except as provided for Paragraph II.C.16. Any other mineral exploration, development, or extraction is prohibited.
11. **Residential Use.** Residential use of the Land or any portion thereof is prohibited, subject to Paragraph II.C. 6 and 7.
12. **Commercial Feedlot.** The establishment or operation of a commercial feedlot is prohibited. A commercial feedlot is defined for purposes of this Easement as a permanently constructed confined area or facility within which the Land is not grazed or cropped annually, for the purposes of engaging in the business of the reception and feeding of livestock for hire. Nothing in this Easement shall be construed to prevent Landowner from seasonally confining livestock in areas for feeding, calving, or similar activities, and nothing herein shall prevent Landowner from leasing pasture, corrals and agricultural improvements to third parties, subject to the terms of this Easement.

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13. **Shooting Preserve, Wildlife Propagation and Related Activities.** The use of the Land as a game farm, game bird farm, shooting preserve, fur farm, zoo or menagerie, or in connection with the ownership, leasing, keeping, holding, capture, propagation, release, introduction, or trade in any animal that may pose a genetic or disease threat to any mammalian, avian, reptilian, aquatic or amphibian wildlife species, whether or not indigenous to Montana, is prohibited; however, Landowner have the right to have ranch dogs and household pets on the Land. This prohibition does not apply to the introduction, transplantation or release of fish or wildlife species on the Land by the Department, which must have the consent of the Landowner for any such introduction, transplantation or release on the Land. Domestic livestock, with the exception of sheep and goats, is allowed. Sheep and goats are allowed with **Prior Approval**.
14. **Commercial and Industrial Use.** Except as permitted in Section II.C., the establishment or operation of any commercial or industrial uses or activities on the Land, including, but not limited to, guest ranching, outfitting, restaurant, campground, trailer park, motel, commercial swimming pool, gas station, retail outlet, or facility for the large-scale manufacture of any products is prohibited.
15. **Waste Disposal.** The processing, dumping, storage or disposal of waste, refuse and debris on the Land is prohibited, except within a single landfill for disposing of and containing personal household and agricultural rubbish and other non-toxic materials in accordance with state law and in a manner and location as provided for in the Management Plan. Abandoned homesteads and preexisting dump sites described in the Baseline Report are exempt from this provision, and with **Prior Notice** may be buried on-site or otherwise disposed of. No new material may be added to these preexisting sites. The deposit of natural organic material derived from livestock and crop production on the Land, and the deposit of material from water-resource facility maintenance activities provided for in Paragraph II.C.5., are not considered waste disposal.
16. **Hazardous Materials.** Any petroleum products, explosives, hazardous substances, toxic substances, and any other substance which may pose a present or potential hazard to human health or the environment shall not be released or dumped on the Land at any time, and shall not be stored or used, except as lawfully stored and used in necessary quantities for agricultural purposes and except as part of the oil and gas exploration and development activities specifically provided for in this Easement. The installation of underground storage tanks is prohibited.

E. MANAGEMENT PLAN

The parties to this Easement developed a Management Plan for grazing management, public access and public use management, wildlife habitat enhancement and restoration, wildlife passage improvement measures, and other matters pertaining to the management of the natural resources of the Land under this Easement. The Management Plan has been signed by the Landowner and the Department, and represents a contractual agreement between the parties to abide by its specific requirements, management actions, and restrictions. However, if there is any

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inconsistency between the terms of the Management Plan and this Easement, the terms of this Easement control. The parties shall meet periodically as needed to review the Management Plan and, if deemed necessary, to propose amendments. Any amendment to the Management Plan must have the written consent of both parties.

In the event that the Land is to be conveyed or has been conveyed to a new owner ("Successor in Interest"), the Department agrees to enter into discussions with the Successor in Interest for the purpose of reviewing the existing Management Plan and determining any revisions that might be appropriate to facilitate management of the Land in a manner consistent with the terms of the Easement and protection of the Conservation Values. The Successor in Interest may sign, acknowledge, and thereby continue the Management Plan that is in effect at the time of the transfer of ownership, or the Successor in Interest may sign and acknowledge a revised Management Plan agreed upon by the Department. However, in the event that the Successor in Interest has not executed with the Department a continuation of the existing Management Plan or a revised Management Plan, then the Management Plan in effect at the time of the ownership transfer shall remain in full force and effect.

F. EASEMENT BASELINE REPORT

The parties agree that a Conservation Easement Baseline Report (Baseline Report), including photographs, maps, surveys, studies, reports, and other documentation, has been completed by a Department biologist or natural resource professional familiar with the area, reviewed by the Department and Landowner, and acknowledged by them to be an accurate representation of the physical and biological condition of the Land and its physical improvements as of the date of the conveyance of this Easement. The original Baseline Report shall be maintained in the files of the Department and shall be made available to Landowner for inspection and reproduction at Landowner's request. The parties intend that the Baseline Report shall be used by the Department to monitor Landowner's compliance with the terms and conditions of this Easement. In the event a controversy arises with respect to the nature of the biological and/or physical condition of the Land and its improvements, the parties may use the report, as well as all other relevant or material documents, surveys, reports, or other information to assist in the resolution of the controversy. From time to time, with the agreement by the Landowner, the Department may prepare (or have prepared) an Updated Easement Baseline Report to document any habitat restoration or other improved habitat conditions. Upon review and approval of the updated report by the Landowner and the Department, the improved conditions documented in the Updated Easement Baseline Report shall be considered the baseline conditions to be conserved and against which the impacts of future activities shall be evaluated.

G. PRIOR NOTICE AND PRIOR APPROVAL

1. Whenever **Prior Notice** is required under this Easement, Landowner must notify the Department as provided for in this section in writing not less than 30 days prior to the date the Landowner intends to undertake such activity, unless, for safety reasons, a shorter period is necessary in which case Landowner shall give the Department as much notice as is possible under the circumstances. The purpose of requiring the Landowner to notify the Department prior to undertaking certain permitted activities is to afford the Department an opportunity to ensure

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that such activities are designed and carried out in a manner consistent with this Easement and its Purposes.

2. Any notice from the Department to the Landowner will be given by electronic correspondence, telephone, or as otherwise agreed, and must be at least 3 days prior to the date of occurrence unless the Department, in its sole discretion, determines that a violation is threatened or imminent or that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values.

3. Whenever **Prior Approval** is required under this Easement, Landowner must notify the Department in writing not less than 60 days prior to the date the Landowner intends to undertake the activity. The notice must be sent by courier service, or registered or certified mail, return receipt requested, or by courier, or personal delivery, and must describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit the Department to make an informed judgment as to its consistency with this Easement and its Purposes. The Department has 60 days from its receipt of such notice to review the proposed activity and to notify the Landowner of any objections to the proposed activity. If it is possible that the proposed activity can be modified to be consistent with the terms of the Easement, the Department shall inform the Landowner of the manner in which the proposed activity as modified may be conducted. The Department's response to Landowner's notice shall be sent by registered or certified mail, return receipt requested, or delivered by courier, or personal delivery service. In the event the Department denies the Landowner's proposed activity, the Department may provide a written determination with analysis of why such activity would significantly impact the Conservation Values of the Land.

4. If the Department fails to respond to Landowner's notice of **Prior Approval** within 60 days of their receipt of the notice, the proposed activity shall be deemed to be consistent with the terms of this Easement, and the Department shall have no further right to object to the activity identified by such notice.

5. The Landowner shall be under no liability or obligation for any failure to give **Prior Notice** or seek **Prior Approval** for any activity undertaken by Landowner necessitated by virtue of fire, flood, acts of God, or other element, or any other emergency reasonably deemed by Landowner to exist; provided, however, after such an event, if there is damage to the Conservation Values, the Landowner shall notify the Department of any such damage as soon as practicable.

6. Except as otherwise stated in this Easement, any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by registered or certified mail, return receipt requested, or delivered by courier, or personal delivery service, addressed as follows:

To Landowner:
Springhill Ranch
618 Ranch Access South
Wibaux, MT 59353-9060

To Department:

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Department of Fish, Wildlife & Parks
Attention: Administrator, Wildlife Division
1420 E. Sixth Avenue
P.O. Box 200701
Helena, MT 59620-0701

With a copy to:

Department of Fish, Wildlife & Parks
Attention: Regional Supervisor
352 I-94 Business Loop
Miles City, MT 59301

or to such other address as the parties from time to time shall designate by written notice to the others. The parties shall provide each other current contact information, including phone numbers and email addresses. All notices which are so addressed and paid for shall be deemed effective when personally delivered, or, if sent by courier or mailed, on the earlier of receipt or five business days after deposit thereof with a courier or mail service, return receipt requested.

H. REMEDIES FOR UNAUTHORIZED USES AND PRACTICES

If the Department determines that the Landowner has violated the terms of this Easement, or if the Landowner undertakes any activity requiring approval of the Department without first obtaining such approval, the Department shall give written notice to the Landowner of the violation and demand corrective action sufficient to cure the violation, and, when the violation involves injury to the Land resulting from any use or activity inconsistent with the terms of this Easement, to restore the portion of the Land so damaged. If the Landowner:

1. fails to cure the violation within 30 days after receipt of notice from the Department, or
2. under circumstances where the violation cannot reasonably be cured within a 30-day period, fails to begin curing the violation within the 30-day period (or, within 30 days of Landowner's receipt of notice from the Department, if Landowner fails to agree with the Department in writing on a date by which efforts to cure such violation will reasonably begin), or
3. fails to continue diligently to cure such violation until finally corrected,

the Department may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement. The Department may seek to enjoin the violation, by temporary or permanent injunction, to require the restoration of the Land to the condition that existed prior to any such injury, and, if restoration is not possible to fully compensate for injury to the Conservation Values, to recover monetary damages for to which it may be entitled for violation of the terms of this Easement.

If the Department, in its sole discretion, determines that a violation is threatened or imminent and that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values, the Department may pursue its remedies under this paragraph without prior notice to the Landowner or without waiting for the period provided for cure to expire.

The Department's rights under this provision apply equally in the event of either actual or threatened violation of the terms of this Easement. The Landowner agrees that the Department's remedies at law for any violation of the terms of this Easement are inadequate. Accordingly, the Department is entitled to injunctive relief. If injunctive relief is inadequate to restore the Conservation Values as a result of a violation and to compensate the Department and the public for the loss and damage to the Department's rights, the Department shall be entitled to recover damages for violation of the terms of this Easement or injury to any Conservation Value protected by this Easement including, without limitation, damages for the loss of scenic, aesthetic, or natural resource values. Without limiting Landowner's liability therefore, the Department, in its sole discretion may apply any damages recovered to the cost of undertaking any corrective action on the Land. The Department's remedies described in this section are cumulative and are in addition to all remedies available at law or in equity.

Nothing contained in this Easement may be construed to entitle the Department to bring any action against the Landowner for any injury to or change in the Land resulting from causes beyond the Landowner's control, including, without limitation, fire, flood, storm, and natural earth movement, or from any prudent action taken to prevent, abate, or mitigate significant injury to the Land resulting from such causes.

Enforcement of the terms of this Easement is at the discretion of the Department, and any forbearance by the Department to exercise its rights under this Easement in the event of any breach of any term of this Easement by the Landowner may not be deemed or construed to be a waiver by the Department of that term or of any subsequent breach of the same or any other term of this Easement. No delay or omission by the Department in the exercise of any right or remedy upon any breach by Landowner may impair the right or remedy or be construed as a waiver, nor may any forbearance or delay give rise to a claim of laches, estoppel or prescription.

Costs of restoration of the Conservation Values that are attributable to Landowner's violation or breach of the terms of this Easement shall be borne by Landowner, unless a court orders otherwise or unless the parties mutually agree to share such costs. In the event of litigation concerning the terms of this Easement, the prevailing party is entitled to its costs and attorneys' fees.

If a dispute arises between Landowner and the Department concerning interpretation of the meaning of this Easement or concerning the consistency of any proposed use or activity with the terms or purposes of this Easement, and if Landowner agrees in writing not to proceed with the use or activity pending resolution of the dispute, either Landowner or the Department may refer the dispute to mediation by request made in writing to the other party. Within 10 days of receipt of such referral, Landowner and the Department will select an impartial mediator who shall conduct the mediation and thereby assist the parties in resolving the dispute cooperatively. Each party shall pay an equal share of the mediator's fee. In referring any matter arising under this

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Easement to mediation, Landowner and the Department agree that mediation offers an alternative to the expense and time required to resolve disputes by litigation and is therefore often preferable to litigation. Nevertheless, mediation pursuant to this paragraph shall be voluntary, and this mediation provision shall not be interpreted as precluding or limiting the parties from seeking legal or equitable remedies available under this Section II.H.

I. HOLD HARMLESS AND INDEMNITY

The Landowner shall hold harmless and indemnify the Department and its employees, agents, and contractors from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including without limitation, reasonable attorneys' fees, arising from or in any way connected with injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Land, as a result of the negligence or willful misconduct of the Landowner or their agents, employees or contractors, unless due to the negligence or willful misconduct of the Department or its agents, employees, or contractors. Nothing herein shall create any indemnity obligation by the Landowner to the Department for any hunter, angler, or recreational user of the property, unless such loss or injury is due to the negligence or willful misconduct of the Landowner or their agents, employees or contractors.

The Department similarly agrees to hold harmless and indemnify the Landowner and their employees, agents and contractors from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including without limitation, reasonable attorneys' fees, arising from or in any way connected with injury to or the death of any person or physical damage to any property, resulting from any action, omission, condition, or other matter related to or occurring on or about the Land, as a result of the Department's exercise of its rights granted under this Easement, unless due to the negligence or willful misconduct of the Landowner or their agents, employees or contractors.

J. TERMINATION, EXTINGUISHMENT, CONDEMNATION, REIMBURSEMENT

This Easement constitutes a real property interest immediately vested in the Department. It is the unequivocal intention of the parties that the conservation purposes of this Easement are carried out in perpetuity. If, however, circumstances arise in the future that render the purposes of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. The parties agree that changed economic conditions may not be considered as circumstances justifying the modification, termination or extinguishment of this Easement.

If the Department or Landowner seeks to extinguish this Easement by judicial proceedings, or should any interest in the Land be taken by the exercise of the power of eminent domain, or acquired by purchase in lieu of condemnation with the **Prior Approval** of the Department, the Department is entitled to a proportional share of the proceeds of any sale, exchange, or involuntary conversion of the Land formerly subject to this Easement. The Landowner and the Department shall act jointly to recover the full value of the property interests in the Land subject to the taking or in lieu purchase and all direct costs or incidental damages to which each is

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entitled.

For the purposes of this paragraph, the ratio of the value of the Easement to the value of the Land unencumbered by the Easement remains constant as determined as of the date of this grant. The parties agree that this ratio is ___ percent, as was determined by independent appraisal at the time of the grant of this Easement, and the parties further agree that the value of any future interest of the Department will not include any value attributable to authorized improvements to the Land made by the Landowner after the date of this grant. Therefore, in the event of any whole or partial judicial extinguishment, or eminent domain or purchase in lieu of condemnation, Landowner shall be entitled to receive from the financially liable party ___ percent of the unencumbered value of the real property and the Department shall be entitled to receive ___ percent of the unencumbered value of the real property. The Department shall use all such proceeds that it receives in a manner consistent with the conservation purposes of this Easement.

K. SUBORDINATION

If at the time of conveyance of this Easement, the Land is subject to a mortgage [or Deed of Trust or Contract for Deed] or other security interest, in favor of _____ [Bank], [address] ("Lienholder"). Said Mortgage/Deed of Trust/Abstract of Contract for Deed was recorded on _____, in Book _____, page _____, under Document No. _____, Records of _____ County, Montana (the "Mortgage"), the Lienholder has agreed by separate Subordination Agreement, which will be recorded immediately after this Easement is granted, to subordinate its rights in the Land to this Easement to the extent necessary to permit the Department to enforce the purposes of the Easement in perpetuity and to prevent any modification or extinguishment of this Easement by the exercise of any rights of the Lienholder or other holders of a security interest. The priority of the existing mortgage or other security interest with respect to any valid claim to the proceeds of the sale or insurance, or to the leases, rents, and profits of the Land is not affected by this Easement. All provisions contained in this Section II.K., shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.

L. ASSIGNMENT

This Easement is transferable, but the Department may assign this Easement only to an organization that is a qualified organization at the time of transfer under § 170(h) of the Internal Revenue Code of 1986, as amended (or any successor provision then applicable), and the applicable regulations promulgated thereunder, and authorized to acquire and hold conservation easements under the laws of the state of Montana. As a condition of any assignment, the Department shall require that the conservation purposes of this Easement are to be carried out in perpetuity.

M. AMENDMENT

If circumstances arise under which an amendment to or modification of this Easement would be appropriate as set forth in the Department's Amendment Policy, the Landowner and the Department are free to jointly amend this Easement; provided that no amendment may be

*Horse Creek Complex 2 FWP Conservation Easement
Springhill to FWP
December 14, 2017*

allowed that will affect the compliance with or the qualification of this Easement under any applicable laws, including § 76-6-101, *et seq.*, MCA, or §170(h) of the Internal Revenue Code, as amended. Any amendment must be consistent with the purposes of this Easement, may not affect its perpetual duration, and either must enhance, or must have no effect on, the Conservation Values which are protected by this Easement. Furthermore, any amendment must not result in prohibited inurement or private benefit to the Landowner or any other parties. Any Easement amendment must be in writing, signed by both parties, and recorded in the public records of affected counties.

N. RECORDING

The Department shall record this instrument in a timely fashion in the official records of the affected counties and may re-record it at any time as may be required to preserve its rights in this Easement.

O. REPRESENTATIONS AND WARRANTIES

Landowner represents and warrants that, after reasonable investigation and to the best of their knowledge:

1. Landowner has clear title to the Land; that Landowner has the right to convey this Conservation Easement; and that the Land is free and clear of any encumbrances, except those encumbrances that have been expressly approved by the Department.
2. Any handling, transportation, storage, treatment or use of any substance defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in anyway, harmful or threatening to human health or the environment, that has occurred on the Land prior to the date of this Easement has been in compliance with all applicable federal, state, and local laws, regulations, and requirements. No deposit, disposal, or other release of any hazardous substance has occurred on or from the Land, in violation of applicable law.
3. No underground storage tanks are located on the Land, whether presently in service or closed, abandoned, or decommissioned, and no underground storage tanks have been removed from the Land in a manner not in compliance with the applicable federal, state, and local laws, regulations, and requirements.
4. Landowner and the Land are in compliance with all federal, state, and local laws, regulations, and requirements applicable to the Land and its use.
5. There is no pending or threatened litigation in any way affecting, involving, or relating to the Land, other than the ongoing statewide adjudication of water rights in Montana.
6. No civil or criminal proceedings or investigations have been instigated at any time or are now pending, and no notices, claims, demands, or orders have been received, arising out of any violation or alleged violation of, or failing to comply with, any federal, state, or

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local law, regulation, or requirement applicable to the Land or its use, nor do there exist any facts or circumstances that Landowner might reasonably expect to form the basis for any such proceedings, investigations, notices, claims, demands, or orders.

P. GENERAL PROVISIONS

1. Controlling Law. The interpretation and performance of this Easement will be governed by the laws of the State of Montana.
2. Construction. Any general rule of construction to the contrary notwithstanding, this Easement must be liberally construed in favor of the grant to effect the purposes of this Easement and the policy and purposes of § 76-6-101, *et seq.*, MCA. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes of this Easement that would render the provision valid must be favored over any interpretation that would render it invalid.
3. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged into this Easement. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with Section II.M above.
4. No Forfeiture. Nothing contained in this Easement will result in a forfeiture or reversion of Landowner's title in any respect.
5. Successors. This Easement is binding upon, and inures to the benefit of the parties, their heirs, administrators, successors and assigns, and continues as a servitude running in perpetuity with the Land.
6. Termination of Rights and Obligations. A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Land, except that liability for acts or omissions occurring prior to transfer survive transfer.
7. Severability. If any provision of this Easement is found to be invalid, the remainder of the provisions of this Easement remain in effect.
8. Subordination. No provision of this Easement is to be construed as impairing the ability of Landowner to use the Land as collateral for any loan, provided that any mortgage or lien arising after the date of execution of this Easement shall be subordinate to the terms of this Easement.
9. Subsequent Deeds and Instruments. The Landowner agrees that reference to this Easement will be made in any subsequent purchase and sale agreements, deeds, or other legal instruments conveying an interest in the Property (including any leasehold interest).

10. Counterparts. This Easement may be executed in counterparts which, taken together, shall constitute one and the same instrument.
11. Joint Obligation. The obligations imposed by this Easement upon Landowner shall be joint and several.
12. Section Headings. Section headings are for convenience only and will not be given effect in interpretation of this Easement.

TO HAVE AND TO HOLD unto the Department, its successors, and assigns FOREVER.

IN WITNESS WHEREOF, the Landowner and the Department have set their hands on the day and year first above written.

GRANTED BY: LANDOWNER

STATE OF MONTANA)
 : ss.
COUNTY OF DAWSON)

This instrument was acknowledged before me on _____, 201__,
by _____.

(SEAL)

Notary Public

STATE OF MONTANA)
 : ss.
COUNTY OF WIBAUX)

This instrument was acknowledged before me on _____, 201__,
by _____.

*Horse Creek Complex 2 FWP Conservation Easement
Springhill to FWP
December 14, 2017*

Notary Public

Martha Williams, Director

_____, 201__, by _____.

Notary Public

EXHIBIT A

Legal Description of the Horse Creek Complex 2 (FWP) Conservation Easement

Legal Property Description of Horse Creek Complex, Wibaux County

T13N, R57E MPM

Section 13: All

Section 14: N1/2SE1/4, SW1/4SE1/4

Section 22: S1/2

Section 23: All

Section 26: All

Section 27: All

T13N, R58E MPM

Section 4: Lots 1, 2, 3, 4, S1/2NW1/4, SW1/4NE1/4, S1/2

Section 5: All

Section 7: All

Section 8: NE1/4, W1/2SE1/4, S1/2SW4

Section 17: All

Section 18: All

T14N, R58E MPM

Section 26: W ½ NE ¼, E ½ NW ¼, SW ¼ NW ¼, N ½ SW ¼, SW ¼ SW ¼

Section 27: All

Section 28: S ½, NE ¼

Section 32: NE ¼, W ½ SE ¼

Legal Property Description Horse Creek Complex, Dawson County

T13N, R57E MPM

Section 1: Lots 1, 2, 3, 4, S1/2N1/2, S1/2

Section 2: Lot 4, SE1/4NE1/4, SW1/4, E1/2SE1/4

Section 2: Lots 1, 2, 3, SW1/4NE1/4, S1/2NW1/4, W1/2SE1/4

Section 11: All

Section 12: S1/2N1/2, W1/2SE1/4, N1/2SW1/4

Section 14: NW ¼

Section 14: W ½ NE ¼, N ½ SW ¼, SW ¼ SW ¼

Section 15: S ½ S ½

Section 22: S ½ NW ¼

Section 22: N ½ NW ¼

T14N, R57E MPM

Section 25: S1/2SW1/4SW1/4, SE1/4SW1/4, S1/2NE1/4SW1/4,

S1/2SW1/4NE1/4, SE1/4NE1/4, SE1/4

Section 26: S1/2SE1/4SE1/4

*Horse Creek Complex 2 FWP Conservation Easement
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Section 35: SE1/4SW1/4, S1/2NE1/4SW1/4, S1/2SW1/4NE1/4,
NE1/4NE1/4, SE1/4NE1/4, SE1/4

T14N, R58E MPM

Section 9: That portion of the S ½ laying south of the Railroad Right of
Way.

Section 19: ALL

Section 20: N ½

Section 21: All

Section 28: NW ¼

Section 29: All

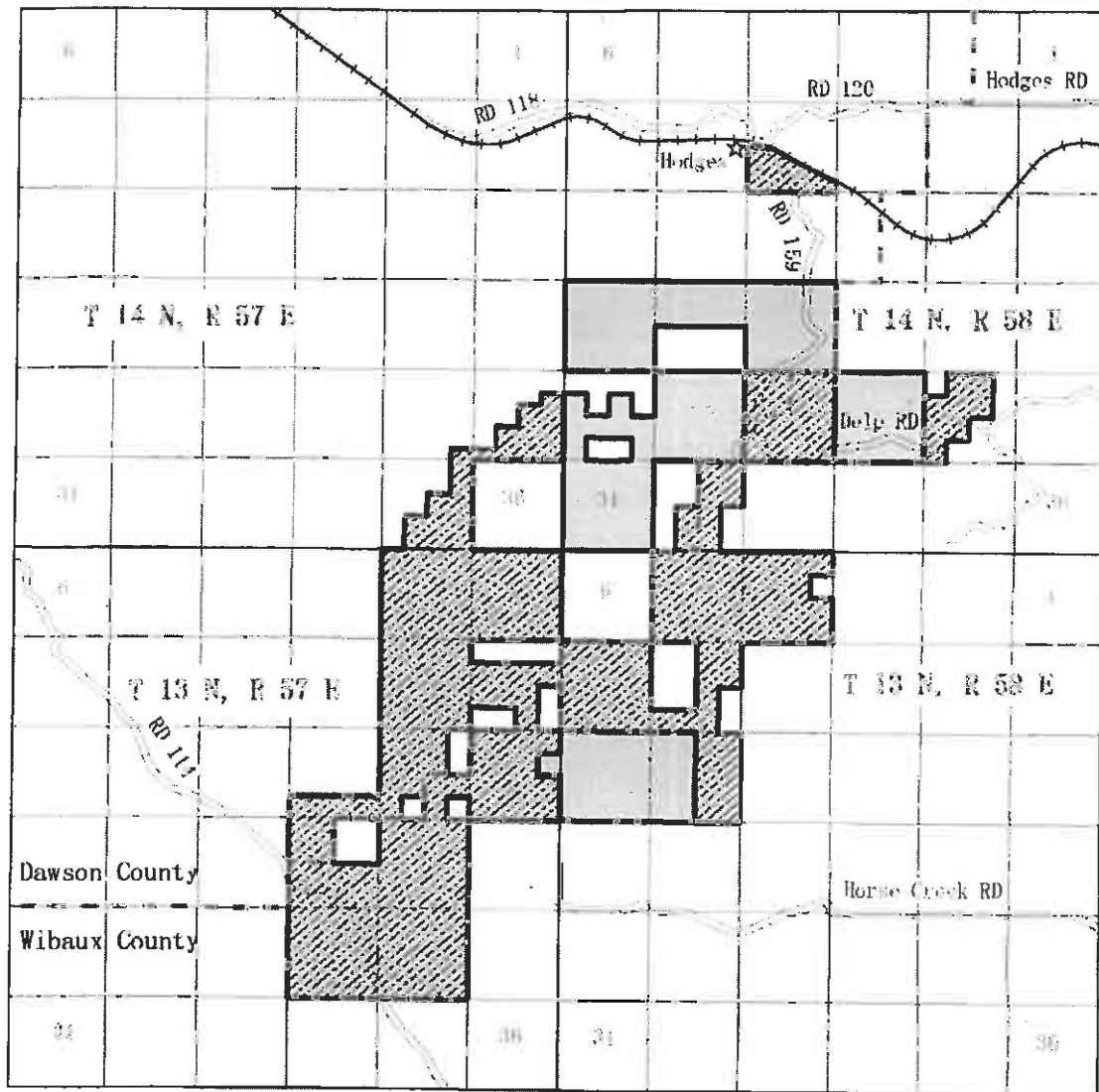
Section 30: Lots 2, 3, 4, NE ¼ SW ¼, SW ¼ NE ¼, N ½ SE ¼, SE ¼ SE ¼







Section 31: All

Section 32: E ½SW ¼

END OF EXHIBIT A

EXHIBIT B MAP OF THE LAND



-  Horse Creek Complex Conservation Easement #1 (ALE)
-  Horse Creek Complex Conservation Easement #2 (FWP)
FWP conservation easement overlays ALE conservation easement and encompasses additional land
-  Federal, State, Private Land
-  Road
-  Railroad
-  County Boundary

N
0 0.5 1 Miles

END OF EXHIBIT B

*Horse Creek Complex Conservation Easement 2 (FWP)
Springhill to FWP
December 14, 2017*

EXHIBIT C

FWP MINIMUM STANDARDS FOR GRAZING LIVESTOCK

Introduction

The following grazing standards represent the minimum required by FWP of a landowner who reserves the right to pasture and graze livestock (private and public land). These standards apply to all FWP funded projects; at times it may be necessary to provide more rest from grazing than described as minimum to meet specific wildlife or fisheries habitat objectives. The minimum is most frequently applied (without additional adjustment for wildlife and fisheries needs) on projects like conservation easements and Upland Game Bird Habitat Enhancement Projects where the property remains in private ownership and agricultural use remains the primary objective. On FWP-managed Wildlife Management Areas (WMAs), wildlife production and habitat conservation are the primary objective and when livestock grazing occurs it is not unusual for the amount of rest from livestock grazing to exceed that required by the minimum standard. Also on WMAs, grazing intensity may be reduced to a level significantly lower than allowable by the minimum standard. These standards are designed to address management of both upland and riparian landforms.

Why a minimum standard?

Livestock grazing is the predominant land use in Montana. As the state's primary fish and wildlife management agency, FWP is actively involved with livestock grazing as it influences fish and wildlife habitats throughout Montana. About 2.4 million cattle are maintained in Montana. Livestock grazing occurs on about 69% of the state's land surface. Potential impacts to fish, wildlife and their habitats caused by grazing are well documented in the literature. Also well documented are potential benefits for conservation that can be derived for some wildlife species through carefully planned livestock grazing strategies. Conserving wildlife habitat while continuing livestock grazing typically requires management strategies that differ from those employed for the sole purpose of maintaining a sustainable livestock forage base that maximizes livestock production. One reason for the difference in management strategies is because vegetation is much more than a forage base for wildlife. Vegetation species composition, structure, and diversity are important aspects of cover essential to the survival and production of wildlife. Healthy riparian communities are critical not only for aquatic species but for proper channel and flood plain function. Seventy-five percent of all Montana wildlife species rely on riparian areas for all or a portion of their lives. This includes many species covered in the FWP's Comprehensive Fish and Wildlife Strategy. When livestock grazing occurs, it is not unusual for cover to be the population limiting factor for many species. Aldo Leopold referred to this concept of habitat quality as 'Quality of Landscape'. Addressing cover is especially important in implementation of FWP's Comprehensive Fish and Wildlife Strategy. It is therefore possible that a livestock operator may be employing a grazing strategy that maintains a sustainable forage base on most of the property, but may not be providing adequate forage, cover, or floral diversity for important fish and wildlife species.

Sustainable livestock production often employs grazing strategies emphasizing production and maintenance of grass species while placing less emphasis on the maintenance of forbs and woody plants. Many wildlife species require grazing strategies that emphasize healthy woody plants and availability of forbs and grass seed heads on at least portions of the landscape every year. The maintenance of robust woody vegetation and cover is also a very important component of healthy riparian systems. Healthy ecological systems are essential for a variety of aquatic and terrestrial riparian obligates.

The purpose of FWP's minimum grazing standards is to achieve a balance between maintaining sustainable agriculture and quality fish and wildlife habitat on working ranches and to provide flexibility to conserve and protect habitat needs on WMAs where wildlife habitat is the primary objective and agriculture is secondary. FWP has applied the standard successfully over the past 30 years on a variety of projects ranging from working cattle ranches to FWP WMAs. There are examples in Montana and other states where a grazing standard similar to FWP's is being applied by livestock operators independent of FWP.

Grazing Plan

Prior to grazing livestock, the Landowner and FWP must agree upon and implement a grazing plan. A grazing plan includes a map of the pastures, a grazing formula specific to those pastures, the class of livestock, and other information pertinent to the management of livestock. Format for the grazing plan is included as part of the management plan template for conservation easements. The grazing plan will be included as part of the Management Plan for easement projects, and will define the limits and extent to which grazing may occur. The Management Plan may be amended by mutual consent, as more particularly described in Paragraph II.E. of the Conservation Easement. For other projects, the management plan will be included as an attachment to the grazing lease or contract. On conservation easements, the grazing plan will be enforceable only on lands covered by the easement.

Upland Minimum Grazing Standard for Summer/Fall Systems

This standard applies to upland pastures in native plant communities (i.e. generally on soils that have never been plowed) and for all riparian pastures. The grazing plan must meet or exceed minimum levels of periodic rest from livestock grazing to allow native plants adequate opportunity to reproduce and replenish root reserves. The minimum amount of rest required for any pasture grazed in one year during the plant growing season is defined as rest throughout the following year's growing season (i.e. grazing deferred until seed-ripe), followed by one year of yearlong rest, as shown in Table 1. Each pasture receives only one grazing treatment per year, and the treatments are rotated annually as shown in Table 1. The growing season is defined as beginning with the period of rapid plant growth (generally early to mid-May) until seed-ripe for the latest maturing native grasses, such as bluebunch wheatgrass or western wheatgrass (generally early August). Because the exact dates can vary as much as a few weeks depending on the location in Montana, specific dates for livestock movement are developed for each project. Occasionally it may be necessary for the grazing system to allow for some livestock to be in the pasture scheduled for the A treatment (Table 1) beyond the growing season.

A three-pasture grazing system is used as an example (Table 1) to show how the landowner might typically rotate livestock through pastures to meet the minimum levels and required sequence of rest from livestock grazing. In practice, the landowner is not limited to any particular number of pastures; many projects include more than three pastures. In some instances, sub-pastures are employed to meet riparian or other objectives on the land. If livestock are grazed, they must be moved through the pastures in compliance with these standards and the grazing plan. Where grazing occurs during the growing season, the three-treatments outlined in Table 1 are essential and the total number of pastures and/or sub-pastures will vary between projects.

Table 1. Livestock Grazing Formula using a three pasture approach as an example.

Grazing Seasons	Pasture 1	Pasture 2	Pasture 3
Year One	A	B	C
Year Two	B	C	A
Year Three	C	A	B
When all treatments have been applied to all pastures, the grazing rotation begins again at year one.			
A = livestock grazing allowed during the growing season; B = livestock grazing begins after seed-ripe time; C = rest from livestock grazing yearlong.			

Winter and/or Early Spring Grazing

In some situations, an early grazing treatment (prior to mid- May) may be considered. However, it must be kept in mind that grazing capacity and forage production in the year a pasture is grazed from winter to beyond mid-May, will be temporarily reduced. On projects where early spring grazing (prior to rapid plant growth) is combined with summer (active growing season) grazing the three grazing treatments described in Table 1 must be employed.

It is usually more efficient to manage winter grazing separately from spring-summer grazing. If livestock are to be grazed in a native range or riparian pasture in winter or early spring (generally December through early May), and a separate grazing formula is required, it must be coordinated with the summer-fall grazing system as follows: Minimum required rest in pastures where livestock are grazed and/or fed hay during winter is one winter of rest in every two (2) years. Hay, grain, salt, protein or other supplements will not be placed in riparian areas during winter or any other season. Minimum required rest in pastures where livestock are grazed in spring, prior to early May, is one spring of rest in every two years. Any pastures grazed later in spring than early-mid May require the greater amount of rest shown in the table 1. As a minimum, when grazing is limited to winter or the non-growing season period, a two-pasture alternate use approach is frequently used. The area designated for winter grazing is divided into two pastures and each year one pasture is grazed during winter months and the other rested and use is alternated from year to year.

During winter months cattle tend to concentrate in wooded areas (shrub or tree-dominated areas) for shelter. This must be kept in perspective when assessing the impacts to woody vegetation. It is often the case that with careful placement of hay, cattle impacts to woody

vegetation can be kept to a small portion of the area. If this is not the case, it might be necessary to fence a portion of the woody vegetation to protect it from damage, but should only be done once efforts to control livestock distribution by other means have proven ineffective. An acceptable level of impact will vary depending on the objectives (i.e. a level of woody vegetation impact acceptable for a working cattle ranch may be much different than for a WMA).

Scope

The goal is to include as much of the lands under easement as possible within the grazing system, but one must be realistic in recognizing the unique needs of a livestock operation. For instance, it may be necessary to set aside small areas as animal husbandry units to be used at the landowner's discretion. Such areas might include calving pastures, branding pastures, sorting pens, bull pastures, holding corrals, or pastures used for weaning and shipping. Also, one or more pastures may be necessary for rounding up or transitioning livestock between summer/fall and winter seasons, which may require annual fall grazing. As long as the majority of the native rangelands involved are within a grazing system that meets the minimum standards for yearlong rest and season long deferment, this is acceptable.

Non-native Pasture

It is common for livestock operators to have pastures on their land that are non-native range. The landowner's goal is usually to keep these pastures productive as non-native pasture. The pastures typically are seeded with an exotic pasture grass or grass mix. On occasion forbs like dry-land alfalfa are included in the planting. The minimum standards for season long deferment and yearlong rest applied to native rangelands do not necessarily apply to non-native pastures. In cases of non-native pasture, a grazing strategy that is coordinated with the grazing system and meets the needs of the ranch should be worked out. In the case of crested wheatgrass pasture it may be necessary to allow grazing early (late-winter or early spring) each year to maintain palatability. In the case of other pasture grasses, such as smooth brome, a deferred approach works well; a pasture is grazed during the growing season in year one then deferred from grazing until near seed-ripe in year 2 (about the time such grasses would normally be harvested as hay). This will maintain the productivity of the non-native species until replanting is necessary and in some cases maintain them as attractive feeding sites for large wild ungulates. It is important to keep in mind that these areas, unlike native range, are essentially cropland and whether grazed or left idle will eventually need some sort of agricultural practice to maintain their productivity.

It is usually best to leave irrigated pasture management to the landowner's discretion. If important riparian is included in the field it might be necessary to fence the riparian zone from the irrigated pasture to protect it from livestock grazing. Usually grazing strategies employed on irrigated pasture are not consistent with proper management of key native riparian plants. In such situations, it may be necessary to apply the guideline Series entitled: The Need for Stream Vegetated Buffers Parts 1 through 3, Montana Department of Environmental Quality 2008.

Livestock operators often place cows in hayfields during winter months. In such cases the field should be managed at the landowner's discretion and in some instances, it might be necessary to fence out riparian from the hayfield to protect it from grazing.

Stocking Rate

Usually FWP does not require a maximum stocking rate as part of the grazing strategy on easements or Upland Game Bird Habitat Enhancement Projects. In such cases it is clearly stated in the grazing plan, that the maximum stocking rate will be ultimately determined by the operator's ability to conform to the grazing system. In other words, the livestock numbers may increase as long as the plan can be followed and livestock movement dates are not compromised. Such an approach is consistent with the reality that, for most easement projects, the primary use of the land is agricultural.

Occasionally a landowner has requested that an upper limit stocking rate be established as a stipulation in the easement. As long as the number of livestock is realistic this is not a problem.

On lands owned by FWP any grazing that occurs will be at stocking levels determined by the agency and approved by the FWP Commission.

Mineral and Other Supplements

On privately owned grazing lands the landowner is given more discretion on locations for placement of mineral block than on FWP lands. However, regardless of land ownership the placing of mineral block within riparian areas will be strongly discouraged. On FWP lands the placement of mineral block will be described as part of the grazing plan. Supplements will be placed away from riparian areas, ponds, and roads. Rocky (stable soil) areas on ridge tops or in the trees are preferred sites.

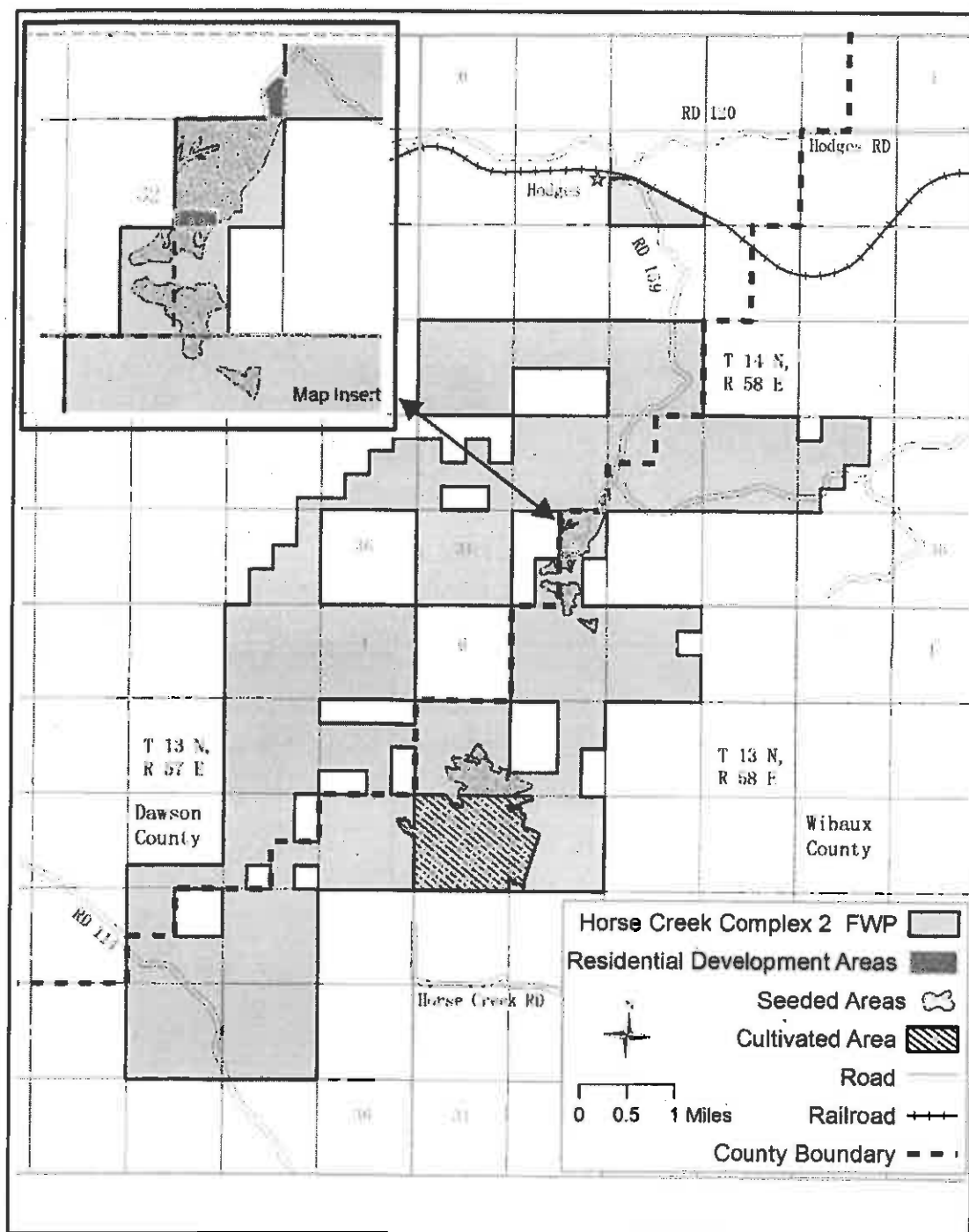
On FWP lands livestock within pasture grazing systems are not to be fed hay.

Flexibility

Rarely, a severe environmental influence (i.e. fire, drought, grasshoppers) may require a onetime deviation from the prescribed grazing plan. In such cases the landowner is to notify the local FWP representative of the problem. In a timely manner the local FWP representative, Habitat Section representative, and landowner will meet to discuss the issue and work out a solution. It is important to keep in mind that short term adjustments to the grazing plan must be the exception rather than the rule. Allowing grazing to occur in a pasture scheduled for rest is always a last resort. FWP has managed grazing systems across Montana through a variety of severe environmental events. This experience has shown that when a legitimate problem exists an alternative can usually be found that avoids grazing the pastures scheduled for rest.

END OF EXHIBIT C

EXHIBIT D **Map of Existing Development Areas, Seeded Areas, and Cultivated Areas**



END OF EXHIBIT D

EXHIBIT E

Paleontological Resources

The extraction of paleontological resources is conditioned and limited as follows:

1. Prior to commencing excavation of a major paleontological find, or the excavation of an area larger than one contiguous acre on the Land, Landowner shall submit to FWP an Operating Plan describing the proposed:

- Location, size, and boundary of disturbance or excavation area;
- Size of footprint for all associated activities;
- Access routes;
- Timing of excavation season;
- Reclamation plan that includes methods, materials, and timeline;
- Compatibility with hunting and other public use of the property.

2. Before any surface disturbance as described in Paragraph 1 occurs upon the Land the Landowner must obtain the written approval of the Operating Plan by FWP's Wildlife Division Administrator or FWP's Director. Such approval shall not be unreasonably withheld. In the event that the Operating Plan is not approved by FWP, FWP shall make good faith efforts to work with Landowner to develop an acceptable Operating Plan.

3. Excavation shall not occupy more than five total acres of the Land, whether contiguous or non-contiguous. No excavation shall be operated in the same location for more than three continuous years. FWP may waive such restrictions pursuant to the Operating Plan.

4. Prior to any surface disturbance of the property, Landowner shall segregate and store the top 18 inches of topsoil, or all available topsoil, whichever is applicable to the site.

5. Landowner shall be responsible for control of noxious weed infestations that result from paleontological activities until infestation no longer exists. Landowner shall exercise reasonable care in the conduct of its research activities to reduce the likelihood or impact of noxious weed infestation. Landowner shall further comply with the Montana County Noxious Weed Management Act, § 7-22-2101 MCA, *et seq.*, as follows:

If the Landowner disturbs vegetation on the Land for any reason related to paleontological excavation, Landowner shall reclaim and revegetate the disturbed area. Landowner shall submit to the Department a written plan specifying the methods to be used to accomplish revegetation. The plan must describe the time and method of seeding, fertilization, proposed plant species, use of weed-free seed, and the weed management procedures to be used. The plan must receive the Department's **Prior Approval** before being implemented by the Landowner. Landowner shall re-grade any disturbed areas to their approximate original contour, apply topsoil, and revegetate all disturbed areas with an approved seeding mixture to the satisfaction of FWP. If the first seeding

of compatible grass species does not germinate to the satisfaction of FWP, Landowner shall reseed those areas remaining open to erosion and weeds.

6. No paleontological activities shall be conducted during the Montana big game rifle hunting season without the express written consent of FWP. Such consent may occur pursuant to the Operating Plan.

7. Prior to any surface disturbing activity, Landowner shall submit a reclamation bond to be held by FWP to ensure the reclamation of the disturbed lands as described herein. The bond shall be equal to the inflation-adjusted appraised value of the Easement of the acres to be disturbed by Landowner and shall be specified in the Operating Plan.

8. Reclamation of areas one acre or less will be initiated within one year of completion of excavation. In all cases, reclamation shall be initiated on areas one acre or less within three years of disturbance. FWP may waive such restrictions.

END OF EXHIBIT E

**ATTACHMENT B:
DRAFT MANAGEMENT PLAN**

DRAFT MANAGEMENT PLAN

FOR THE DISTINCT AND OVERLAPPING

HORSE CREEK COMPLEX CONSERVATION EASEMENTS



DECEMBER 2017



***Montana Fish,
Wildlife & Parks***

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1. INTRODUCTION

Two distinct overlapping Deeds of Conservation Easement (“Easement(s)”) have been granted by Springhill Ranch, a Montana Corporation, (“Landowner”) whose address is 618 Ranch Access S, Wibaux, MT 59353-9060 to Montana Department of Fish, Wildlife and Parks (“FWP”) whose address is 1420 East Sixth Avenue, P.O. Box 200701, Helena, Montana 59620-0701. The Easements encumber all or a portion of the Horse Creek Complex deeded property depicted in Figure 1.1 as follows: The Horse Creek Complex 1 Agricultural Land Easement (ALE) Deed of Conservation Easement was granted by the Landowner to FWP on DATE, YEAR and recorded in Book XX, Page XX of the records of Dawson County, Montana AND the Horse Creek Complex 2 (FWP) Deed of Conservation Easement granted by the Landowner to FWP on DATE, YEAR and recorded in Book XX, Page XX of the records of Wibaux County, Montana and Book XX, Page XX of the records of Dawson County, Montana. The United States Department of Agriculture Natural Resources Conservation Service (NRCS) maintains a right of enforcement for the ALE Conservation Easement. The FWP Conservation Easement is in addition to the ALE Conservation Easement and in no way amends, modifies, or supersedes the ALE Conservation Easement terms. This Management Plan incorporates the provisions of the Easements into one document that is relevant to the entire Horse Creek Complex (hereafter referred to as the “Land”).

This Management Plan, dated as of DATE, YEAR, is entered into as an agreement between the Landowner and FWP. As required by both Easements, this and future management plans will be consistent with “FWP Minimum Grazing Standards for Grazing Livestock vers. 1.1” which meets and exceeds NRCS grazing practice requirements of the Agricultural Lands Easement Program administered by the NRCS. As applicable to the ALE Conservation Easement, this management plan also serves as both the ALE Management Plan and Grasslands Component Plan.

Whereas conservation easements are intended to endure in perpetuity, the purpose of a management plan is to document strategies that are consistent with the terms and intent of the conservation easements while meeting the current needs of the Landowner and FWP. By design, management plans are intended to be periodically reviewed and updated, upon mutual agreement by the Landowner and FWP, to accommodate changing conditions on the land, fluctuating wildlife populations, advancing technologies, improved scientific knowledge, changing agricultural practices, and other as-yet unknown future situations.

2. GRASSLAND COMPONENT DESCRIPTION

The Horse Creek Complex is located immediately south of Hodges, Montana, 10 miles southwest of Wibaux, Montana, and 20 miles southeast of Glendive, Montana. In addition to the approximately 15,376.36-acre deeded lands under conservation easement, the Landowner currently holds leases on 3,083 acres of BLM and 1,920 acres of DNRC lands, for a total management footprint of 20,379.36 acres (Figure 2.1).

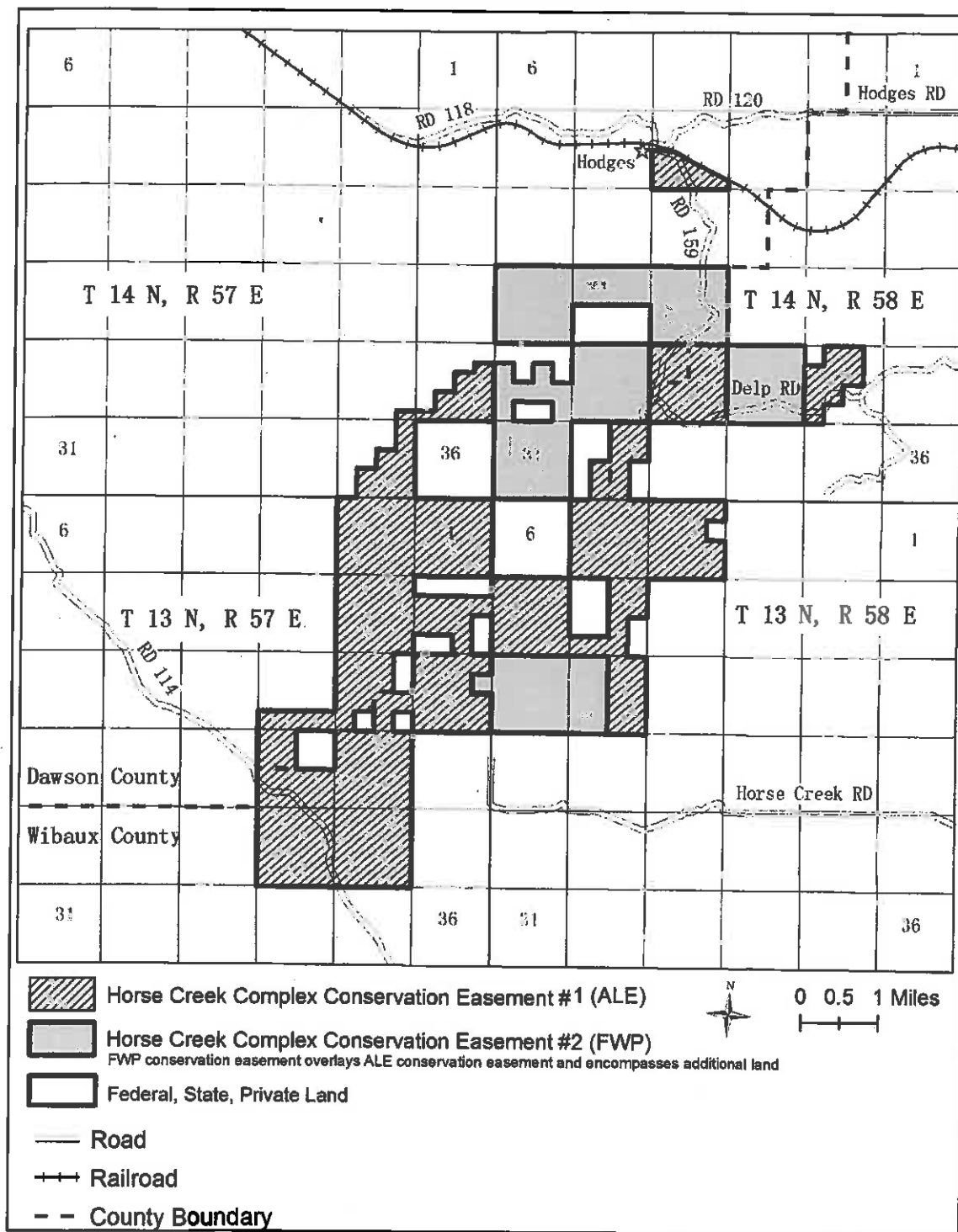


Figure 1.1. Horse Creek Complex showing lands encumbered by two distinct overlapping Deeds of Conservation Easement: Horse Creek Complex Conservation Easement #1 (ALE) and Horse Creek Complex Conservation Easement #2 (FWP).

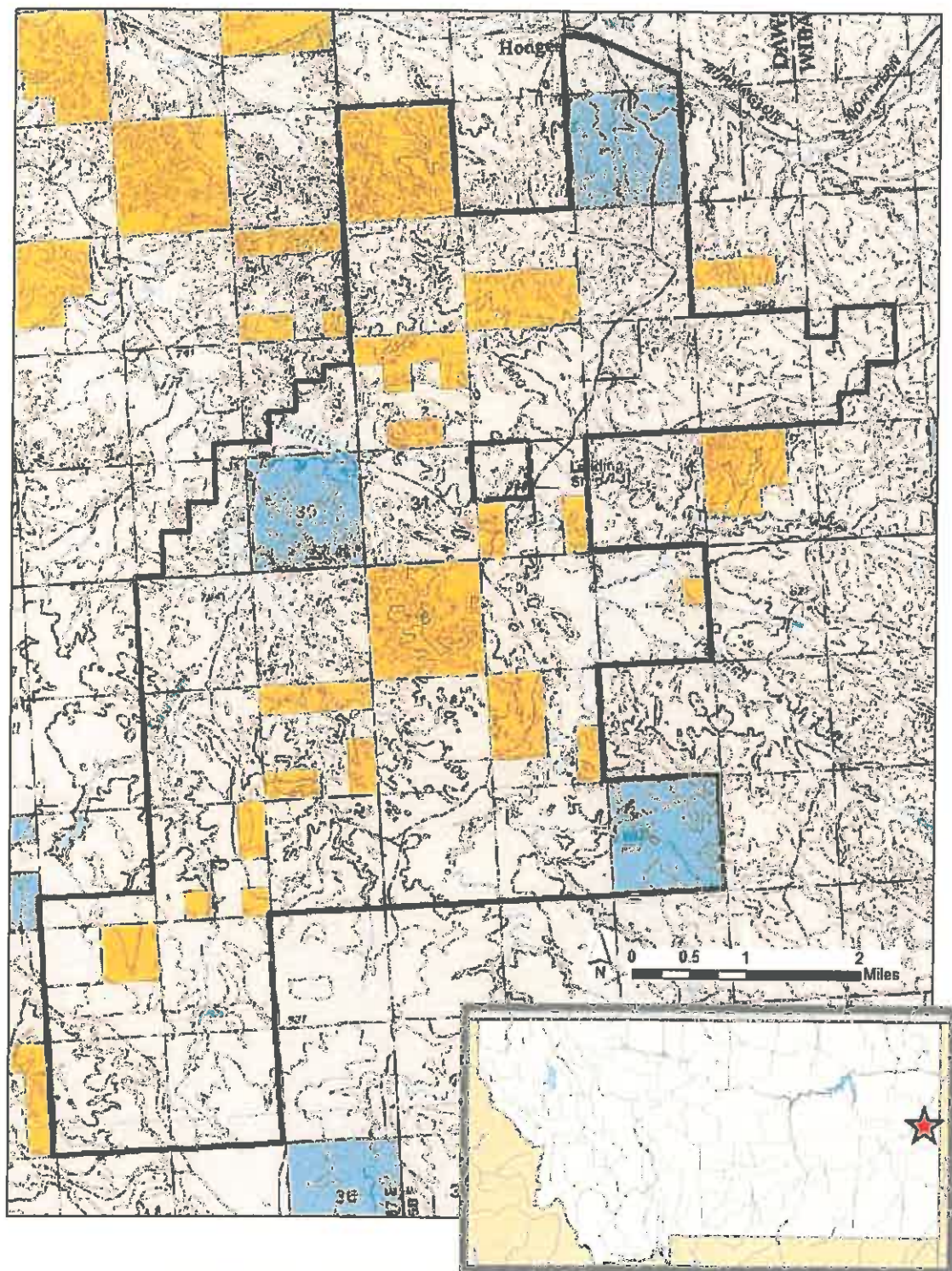


Figure 2.1. Boundary of the Horse Creek Complex and associated public land leases (black outline). The Easements only encumber deeded lands (white). DNRC lands (blue) and BLM lands (gold) leased by the Landowner are shown to demonstrate the footprint of the project. Montana inset map: the location of the Horse Creek Complex (red star).

The Horse Creek Complex is comprised of a variety of landcover types and associated ecological systems (Table 2.1, Figure 2.2). Descriptions of each ecological system, including species compositions, can be found below. The Land is comprised of roughly two-thirds grasslands including the Great Plains Mixedgrass Prairie and Great Plains Sand Prairie ecological systems. The southern portion of the Horse Creek Complex includes extensive, intact stands of Wyoming big sagebrush that occur within mixedgrass and sand prairies, as well as in Big Sagebrush Steppe ecological systems. The Land is within sage-grouse general range, and sagebrush grasslands provide important year-round, especially nesting and winter, habitat for sage-grouse and other sagebrush-associated species. The southern portion of the Horse Creek Complex is year-round antelope range. The middle portion of the Horse Creek Complex contains Great Plains Badlands which offer critical thermal cover for wintering mule deer. Wooded draws occur throughout the property, and especially in the northern portion of the Horse Creek Complex. This system provides excellent habitat for sharp-tailed grouse, songbirds, white-tailed deer, and mule deer. Over 85% of the property is high-quality mule deer winter range. The Horse Creek Complex is interspersed with prairie stream systems and associated riparian habitat along Glendive Creek, Eastman Creek, Horse Creek, Wolf Creek, and Freeman Creek, and other ephemeral minor tributaries. Soil types and Ecological Site Descriptions for the Horse Creek Complex can be found in Table 2.2 and Figure 2.3.

Great Plains Mixedgrass Prairie¹. The Great Plains Mixedgrass Prairie ecological system occurs on uplands, slopes, and creek bottoms, and is the most common ecological system within the Horse Creek Complex, comprising roughly half of the Land (Table 2.1, Figure 2.2). This system occurs on a variety of soils (primarily fine to medium-textured soils) and ecological sites (Table 2.2). In the southern portion of the property Wyoming big sagebrush (*Artemisia tridentata* ssp. *wyomingensis*) - western wheatgrass (*Pascopyrum smithii*) associations are common within the Great Plains Mixedgrass Prairie ecological system. These sagebrush grasslands commonly contain moderate density (10-25% canopy cover) sagebrush, especially where they occur near or adjacent to Big Sagebrush Steppe systems. The result is extensive sagebrush grasslands that are valuable to a variety of sagebrush-associated wildlife species.

Common grass species in the Great Plains Mixedgrass Prairie ecological system include western wheatgrass, thickspike wheatgrass (*Elymus lanceolatus*), green needlegrass (*Nassella viridula*), blue grama (*Bouteloua gracilis*), and needle and thread (*Hesperostipa comata*). Within these systems, western wheatgrass tends to be the dominant grass species, especially on finer-textured soils, with dominance decreasing under prolonged periods of heavy grazing. Sites with a strong component of green needlegrass indicate a more favorable moisture regime and moderate grazing pressure, whereas needle and thread increases with coarser soil textures, or under heavy grazing pressure. Cool season exotics such as Kentucky bluegrass (*Poa pratensis*), smooth brome (*Bromus inermis*), Japanese brome (*Bromus japonicus*), and crested wheatgrass (*Agropyron cristatum*) are common in eastern Montana mixedgrass prairies, and tend to increase in dominance with heavy grazing. These non-native cool-season grasses are ubiquitous

¹ Information about each ecological system is derived from the Montana Natural Heritage Program Field Guide to Ecological Systems, available online at http://fieldguide.mt.gov/displayES_LCLU.aspx, as well as field observation and unpublished data.

Table 2.1. Landcover of ecological systems within the Horse Creek Complex Conservation Easement and associated public land leases (CE+PUB), the Horse Creek Complex 1 (ALE) Conservation Easement (ALE CE), and Horse Creek Complex 2 (FWP) Conservation Easement (FWP CE). Montana Level 3 Landcover data from the Montana State Library. Colors correspond with map, Figure 2.2.

Ecological System	CE+PUB		ALE CE		FWP CE	
	Acres	%	Acres	%	Acres	%
Great Plains Mixedgrass Prairie	9433.4	46.30	5308.4	50.38	7452.3	48.47
Great Plains Badlands	3684.3	18.08	1857.9	17.63	2330.6	15.16
Great Plains Sand Prairie	3424.5	16.81	1568.0	14.88	2745.4	17.85
Great Plains Wooded Draw and Ravine	1946.0	9.55	662.2	6.29	1327.1	8.63
Great Plains Riparian	1566.2	7.69	935.6	8.88	1289.3	8.39
Big Sagebrush Steppe	183.2	0.90	114.9	1.09	121.6	0.79
Mat Saltbush Shrubland	58.0	0.28	29.7	0.28	40.9	0.27
Rocky Mountain Lower Montane-Foothill Shrubland	48.0	0.24	38.7	0.37	38.7	0.25
Great Plains Ponderosa Pine Woodland and Savanna	10.2	0.05	10.2	0.10	10.2	0.07
Open Water	10.2	0.05	7.8	0.07	10.2	0.07
Emergent Marsh	8.0	0.04	2.0	0.02	6.2	0.04
Rocky Mountain Foothill Limber Pine - Juniper Woodland	4.2	0.02	1.1	0.01	3.8	0.02

throughout eastern Montana grassland systems. In many places, these species have been promoted by overgrazing or intentionally introduced by ranchers hoping to improve forage production. The Horse Creek Complex is no exception, but in general these nonnative species occur at low density within native systems on the Land. Forb diversity tends to be high within these systems, with common species including yarrow (*Achillea millefolium*), scarlet globemallow (*Sphaeralcea coccinea*), western sagewort, (*Artemisia ludoviciana*), boreal sagewort (*Artemisia frigida*), silver lupine (*Lupinus argenteus*), fuzzy beardtongue (*Penstemon eriantherus*), shining penstemon (*Penstemon nitidus*), Missouri goldenrod (*Solidago missouriensis*) and dalea (*Dalea* species). Common shrub species include western snowberry (*Symphoricarpos occidentalis*), serviceberry (*Amelanchier alnifolia*), creeping juniper (*Juniperus horizontalis*), silver sage (*Artemisia cana*) and Wyoming big sagebrush.

The dominant land uses within Great Plains Mixedgrass Prairie are grazing and dryland farming (Luna and Vance 2017²). Nearly 90% of the Great Plains Mixedgrass Prairie ecological system within the Horse Creek Complex remains uncultivated; the ALE Conservation Easement contains a total of 166.7 acres with a history of tillage: 21.99 acres of croplands in the northern portion of the property that now function as rangelands dominated by non-native grasses such as crested wheatgrass, and 144.71 acres in the southern portion of the Land that will be managed as a Seeded Area. The ALE Conservation Easement contains an additional 182.4-acre Seeded Area, that was never tilled but was historically subjected to intense grazing and planted to non-native grasses. In addition to the Seeded Areas listed above, the FWP Conservation Easement

²Luna, T. and L. K. Vance. 2010. Great Plains Mixedgrass Prairie. Montana Field Guide. Montana Natural Heritage Program. http://FieldGuide.mt.gov/displayES_Detail.aspx?ES=7114.

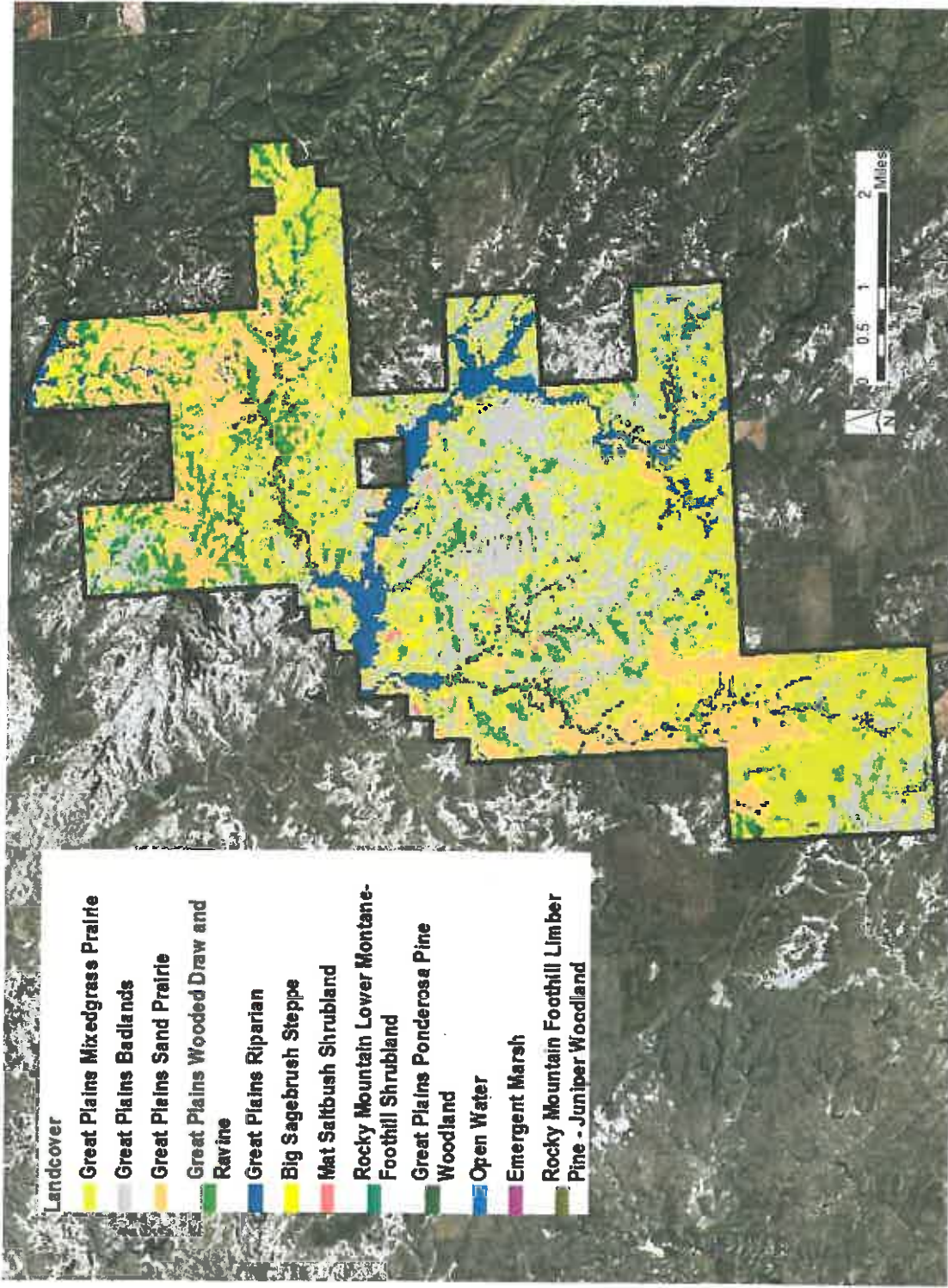


Figure 2.2. Landcover for ecological systems within the Horse Creek Complex and associated public land leases. Acreages for each ecological system can be found in Table 2.1. Montana Level 3 Landcover data from the Montana State Library.

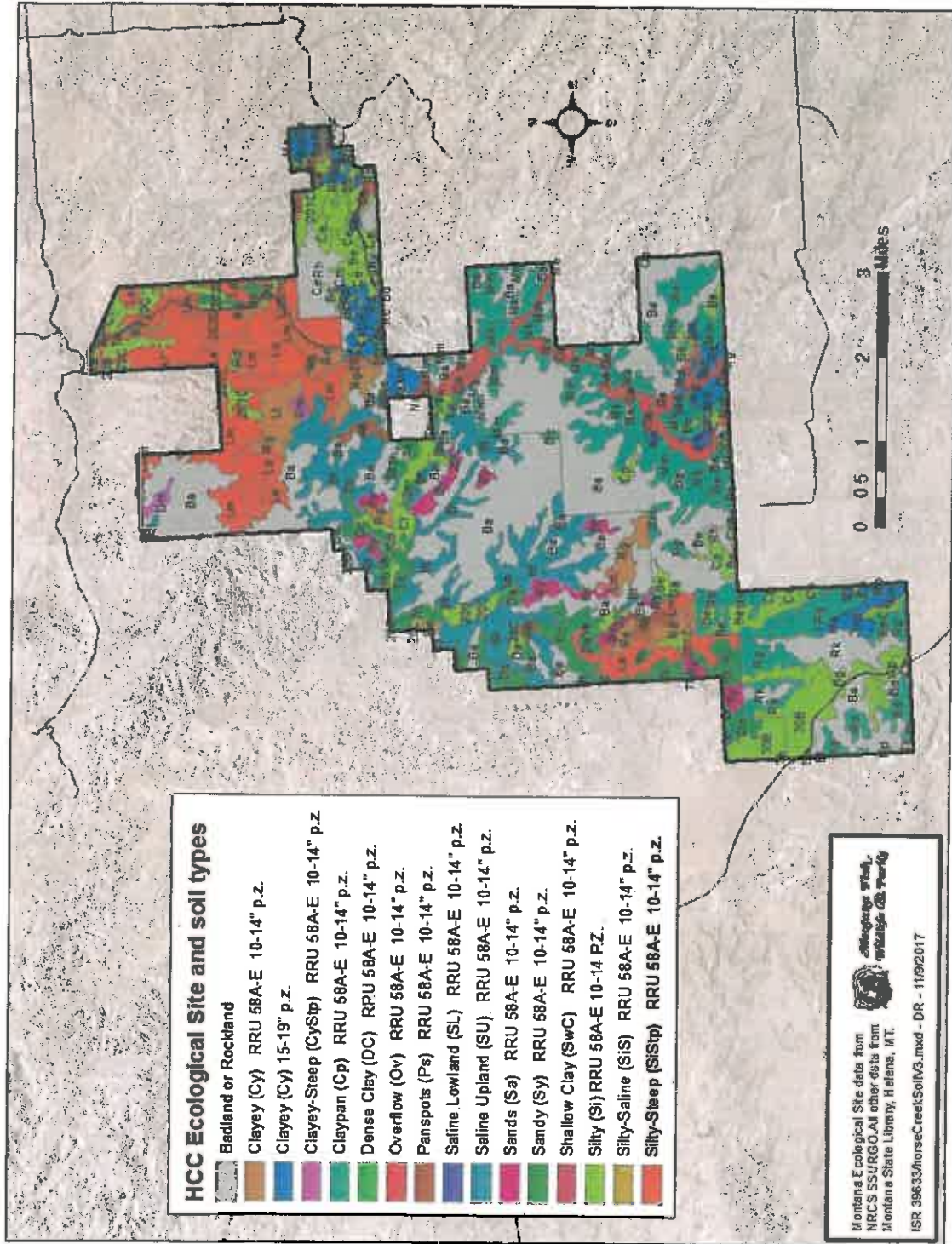


Figure 2.3. Ecological Sites and soil types within the Horse Creek Complex and associated public land leases. Acreages for each soil and ecological site, and associated ecological systems can be found in Table 2.2.

Table 2.2. Soil types, corresponding major plant community types, and Ecological Sites within the Horse Creek Complex Conservation Easement and associated public land leases (CE+PUB), the ALE Conservation Easement (ALE CE), and FWP Conservation Easement (FWP CE). Data from NRCS SSURGO. Landcover of ecological systems is mapped in Figure 2.2. Ecological Sites and soil types are mapped in Figure 2.3.

Map Symbol	Soil Type	CE+PUB (acres)	ALE CE (acres)	FWP CE (acres)	Ecological Site	CE+PUB (acres)	ALE CE (acres)	FWP CE (acres)	Ecological Systems
Ba	Badland	5715.5	2691.1	3492.2	Badland or Rockland	6456.5	3261.2	4183.4	Great Plains Mixedgrass Prairie, Great Plains Badlands, Great Plains Wooded Draw and Ravine, Great Plains Riparian, Big Sagebrush Steppe
Rh	Rockland-Bainville complex, 15 to 50% slopes	375.1	254.0	375.1					
Rk	Rockland-Flasher complex, 15 to 50% slopes	365.9	316.1	316.1					
Lt	Wolf Point silty clay loam, 0 to 2% slopes, occasionally flooded	169.1	0.0	4.4	Clayey (Cy) RRU 58A-E 10-14" p.z.	768.9	249.4	520.9	Great Plains Mixedgrass Prairie, Great Plains Badlands, Great Plains Sand Prairie Great Plains Wooded Draw and Ravine, Great Plains Riparian, Big Sagebrush Steppe
Ma	Marías silty clay, 0 to 2% slopes	10.3	10.3	10.3					
Rd	Dutton silty clay, 4 to 8% slopes	102.7	62.3	93.1					
Re	Dutton-Dim yaw complex, 4 to 8% slopes	124.8	87.6	124.4					
Rg	Dutton-Dim yaw complex, 8 to 15% slopes	362.0	89.2	288.7					
Mb	Midway-Moreau complex, 3 to 7% slopes	14.1	14.1	14.1	Clayey (Cy) 15-19" p.z.	839.2	712.6	824.2	Great Plains Mixedgrass Prairie, Great Plains Badlands, Great Plains Sand Prairie, Great Plains Wooded Draw and Ravine, Great Plains Riparian, Big Sagebrush Steppe, Emergent Marsh
Md	Midway-Moreau complex, 12 to 30% slopes	366.9	292.4	353.9					
Me	Midway-Regent silty clay loams, 3 to 7% slopes	198.0	182.3	198.0					
Mg	Midway-Regent silty clay loams, 8 to 11% slopes	90.8	71.0	90.8					
Rb	Regent silty clay loam, 5 to 7% slopes	93.8	79.2	93.8					
Rc	Regent silty clay loam, 8 to 14% slopes	75.6	73.6	73.6	Clayey-Steep (CyStp) RRU 58A-E 10-14" p.z.	78.8	0.0	8.2	Great Plains Mixedgrass Prairie, Great Plains Riparian, Great Plains Sand Prairie, Great Plains Wooded Draw and Ravine
Dm	Dim yaw silty clay loam, 8 to 25% slopes	78.8	0.0	8.2					

Table 2.2. Continued from previous page.

Map Symbol	Map Unit Name	CE+PUB (acres)	ALE CE (acres)	FWP CE (acres)	Ecological Site	CE+PUB (acres)	ALE CE (acres)	FWP CE (acres)	Ecological Systems
Mk	Moline clay loam, 2 to 4% slopes	571.6	335.1	474.7	Claypan (Cp) RRU 58A-E 10-14" p.z.	2781.6	1761.9	2242.9	Great Plains Mixedgrass Prairie, Great Plains Badlands, Great Plains Sand Prairie, Great Plains Wooded Draw and Ravine, Great Plains Riparian, Big Sagebrush Steppe
Mim	Moline clay loam, 5 to 7% slopes	1168.9	713.9	968.7					
Rd	Rhoades clay loam, 4 to 7% slopes	191.4	191.4	191.4					
Re	Rhoades-Moline complex, 8 to 11% slopes	443.0	116.1	202.7					
Rg	Rhoades-Moline complex, 12 to 20% slopes	406.6	405.4	405.4					
Va	Vanda clay, 0 to 8% slopes	57.5	57.5	57.5	Dense Clay (DC) RRU 58A-E 10-14" p.z.	57.5	57.5	57.5	Great Plains Mixedgrass Prairie, Great Plains Badlands, Great Plains Sand Prairie, Great Plains Wooded Draw and Ravine
Aa	Alluvial land	402.1	236.0	373.2	Overflow (Ov) RRU 58A-E 10-14" p.z.	601.8	360.3	561.4	Great Plains Mixedgrass Prairie, Great Plains Badlands Great Plains Sand Prairie, Great Plains Wooded Draw and Ravine, Great Plains Riparian
Sa	Savage silty clay loam, 0 to 3% slopes	21.5	21.5	21.5					
Ga	Glendive fine sandy loam, 2 to 6% slopes	151.3	96.7	139.8					
Gb	Grail silty clay loam, 2 to 4% slopes	25.5	4.7	25.5					
Gc	Grail silty clay loam, 5 to 7% slopes	1.4	1.4	1.4	Panspots (Ps) RRU 58A-E 10-14" p.z.	155.3	78.8	145.6	Great Plains Mixedgrass Prairie, Great Plains Badlands, Great Plains Riparian, Great Plains Wooded Draw and Ravine, Mat Saltbush Shrubland
Ab	Absher loam, 0 to 8% slopes	155.3	78.8	145.6					
Ch	Cherry silt loam, saline, 0 to 3% slopes	37.7	0.0	37.7	Saline Lowland (SL) RRU 58A-E 10-14" p.z.	47.9	10.2	47.9	Great Plains Mixedgrass Prairie, Great Plains Sand Prairie, Great Plains Wooded Draw and Ravine, Great Plains Riparian
Cm	Cherry silt loam, saline, 4 to 9% slopes	10.2	10.2	10.2					
Bt	Benz-Glendive complex, 2 to 15% slopes	1932.3	814.9	1328.8	Saline Upland (SU) RRU 58A-E 10-14" p.z.	1932.3	814.9	1328.8	Big Sagebrush Steppe, Great Plains Badlands, Great Plains Mixedgrass Prairie, Great Plains Riparian, Great Plains Wooded Draw & Ravine

Table 2.2 Continued from previous page.

Map Symbol	Map Unit Name	CE+PUB (acres)	ALE CE (acres)	FWP CE (acres)	Ecological Site	CE+PUB (acres)	ALE CE (acres)	FWP CE (acres)	Ecological Systems
By	Yetull-Dimyaw complex, 8 to 80% slopes	443.7	271.0	371.8	Sands (Sa) RRU 58A-E 10-14" p.z.	443.7	271.0	371.8	Great Plains Mixedgrass Prairie, Great Plains Badlands, Great Plains Sand Prairie, Great Plains Riparian, Rocky Mountain Lower Montane-Foothill Shrubland
Da	Twilight fine sandy loam, 2 to 8% slopes	78.6	68.2	68.2	Sandy (Sy) RRU 58A-E 10-14" p.z.	1035.6	767.7	898.2	Great Plains Mixedgrass Prairie, Great Plains Badlands, Great Plains Sand Prairie, Great Plains Wooded Draw and Ravine, Great Plains Riparian
Dc	Twilight-Yetull complex, 8 to 25% slopes	449.8	375.2	423.6					
Tb	Chinook fine sandy loam, 4 to 8% slopes	22.9	22.9	22.9					
Tc	Chinook fine sandy loam, 8 to 15% slopes	192.3	171.3	171.3					
Tn	Glendive fine sandy loam, 0 to 2% slopes, occasionally flooded	292.0	130.1	212.2					
No	Neldore clay, 8 to 65% slopes	0.4	0.4	0.4	Shallow Clay (SwC) RRU 58A-E 10-14" p.z.	0.4	0.4	0.4	Great Plains Mixedgrass Prairie, Great Plains Badlands, Great Plains Sand Prairie
201 C	Lonna-Cambeth silt loams, 2 to 8% slopes	223.4	38.9	223.4	Silty (Si) RRU 58A-E 10-14 P.Z.	2578.1	1629.6	2323.5	Great Plains Mixedgrass Prairie, Great Plains Badlands, Great Plains Sand Prairie, Great Plains Wooded Draw and Ravine, Great Plains Riparian, Big Sagebrush Steppe, Rocky Mountain Foothill Limber Pine - Juniper Woodland, Great Plains Ponderosa Pine Woodland and Savanna, Open Water,
202 D	Lonna-Cambeth-Cabbart silt loams, 4 to 12% slopes	85.6	0.0	19.9					
20B	Lonna silt loam, 2 to 4% slopes	124.5	117.5	117.5					
20C	Lonna silt loam, 4 to 8% slopes	233.7	130.7	183.3					
30B	Eapa loam, 0 to 4% slopes	437.0	415.9	415.9					
35B	Floweree silt loam, 0 to 4% slopes	8.2	8.2	7.8					
Bb	Bainville silt loam, 6 to 9% slopes	70.5	32.1	70.5					

Table 2.2 Continued from previous page.

Map Symbol	Soil Type	CE+PUB (acres)	ALE CE (acres)	FWP CE (acres)	Ecological Site	CE+PUB (acres)	ALE CE (acres)	FWP CE (acres)	Ecological Systems
Bc	Bainville silt loam, 10 to 14% slopes	16.9	16.9	16.9	Silty (Si) Continued from previous page.	See previous page.	See previous page.	See previous page.	See previous page.
Bd	Bainville silt loam, 15 to 40% slopes	20.4	20.4	20.4					
Be	Bainville-Chama silt loams, 15 to 30% slopes	461.9	271.3	413.6					
Bg	Bainville-Flasher complex, 6 to 14% slopes	239.9	215.4	215.4					
Ca	Chama silt loam, 4 to 7% slopes	54.9	23.3	54.9					
Ce	Chama-Bainville silt loams, 10 to 14% slopes	156.6	50.8	153.6					
Co	Cushman loam, deep variant, 0 to 3% slopes	40.6	40.6	40.6					
Cp	Cushman loam, deep variant, 4 to 7% slopes	158.6	158.6	158.6					
Ct	Lonna, Havre, and Glendive soils, 0 to 4% slopes, occasionally flooded	245.5	89.0	211.2					
20A	Lonna silt loam, 0 to 2% slopes	5.9	5.9	5.9	Silty-Saline (SiS) RRU 58A-E 10-14" p.z.	5.9	5.9	5.9	Great Plains Mixedgrass Prairie, Great Plains Riparian, Great Plains Sand Prairie
Bh	Bainville-Flasher complex, 15 to 40% slopes	71.4	46.5	71.4	Silty-Steep (SiStp) RRU 58A-E 10-14" p.z.	2595.9	555.1	1855.8	Great Plains Mixedgrass Prairie, Great Plains Badlands, Great Plains Sand Prairie, Great Plains Wooded Draw and Ravine, Great Plains Riparian, Big Sagebrush Steppe, Emergent Marsh
Ld	Lambert-Rock outcrop, soft complex, 15 to 70% slopes	845.8	118.9	676.7					
Le	Lambert-Yetull complex, 15 to 65% slopes	465.6	273.6	390.8					
Lm	Lambert-Dimyaw complex, 15 to 65% slopes	768.1	52.1	607.2					
Lr	Lambert-Kirby complex, 15 to 65% slopes	405.2	34.8	80.5					
Te	Terrace escarpments	39.8	29.2	29.2					

contains 558.63 acres of croplands that will be managed as Cultivated Areas. For maps and information on management of Seeded and Cultivated Areas see section II.C.17 in the ALE Easement, section II.C.2 in the FWP Easement, maps found in Exhibit D of both Easements, and Chapter 4 of this Management Plan. Although limited portions of the Land have a history of tillage or conversion to non-native grasses, the vast majority of Great Plains Mixedgrass Prairie on the Horse Creek Complex remains healthy and functional, and the long-term viability of native plant communities within this ecological system is expected to be maintained or improved under the grazing system described herein.

Great Plains Badlands. The Great Plains Badlands ecological system comprises over 15% of the Land and occurs within the mixed grass and sand prairie systems of eastern and southeastern Montana. Great Plains Badlands are characterized by rugged, eroded land formations and sparse vegetative cover. Soils are typically consolidated clayey soils with bands of sandstone or isolated consolidates. Characterized by clay soils, steep slopes, and limited vegetation, badlands tend to be erosive and received precipitation contributes little to soil moisture. Vegetation communities associated with this ecological system are adapted to soils that are dry throughout the growing season. Common plant associations include greasewood (*Sarcobatus vermiculatus*) - Gardner's saltbush (*Atriplex gardneri*) or few-flowered buckwheat (*Eriogonum pauciflorum*) - threadleaf snakeweed (*Gutierrezia sarothrae*). Grass cover tends to be sparse, with species such as western wheatgrass, bluebunch wheatgrass (*Pseudoroegneria spicata*), and Indian ricegrass (*Achnatherum hymenoides*). Common forbs include few-flowered buckwheat, threadleaf snakeweed, curlycup gumweed (*Grindelia squarrosa*), longleaf wormwood (*Artemisia longifolia*), and Nuttall's povertyweed (*Monolepis nuttalliana*). Other shrubs that may be present include Wyoming big sagebrush, silver sagebrush, rabbitbrush (*Chrysothamnus viscidiflorus* and *Ericameria nauseosa*), saltbush (*Atriplex species*), and Rocky Mountain Juniper (*Juniperus scopulorum*).

Great Plains Sand Prairie. Great Plains Sand Prairie comprises approximately 18% of the Land and occurs on coarse-textured soils that have weathered in place from sandstone caprock or marine shale formations. Soils in sand prairies are highly permeable and susceptible to wind erosion (blowouts) and vegetation loss. Within the Horse Creek Complex, sand prairies are intermixed with Great Plains Mixedgrass Prairie. Needle and thread is often the dominant grass species. Other common species include little bluestem (*Schizachyrium scoparium*), threadleaf sedge (*Carex filifolia*), bluebunch wheatgrass, and purple threeawn (*Aristida purpurea*). Forb species include scurf pea (*Psoralidium species*), Indian breadroot (*Pediomelum*), and Narrowleaf purple coneflower (*Echinacea angustifolia*). Common shrubs include silver sage, Wyoming big sagebrush, horizontal juniper, skunkbush sumac (*Rhus trilobata*), and Soapweed yucca (*Yucca glauca*). The grazing system described in Chapter 3 of this Management Plan incorporates periods of rest which will allow plants to recover from grazing and minimize the occurrence of blowouts and vegetation loss within Great Plains Sand Prairie systems.

Great Plains Wooded Draw and Ravine. Great Plains Wooded Draw and Ravine ecological systems comprise approximately 9% of the Horse Creek Complex and are associated with intermittent to ephemeral streams. These narrow, linear bands of woody vegetation provide critical wildlife cover, browse and mast production. Snow entrapment and seasonal, short-duration flooding provide critical moisture that promotes woody species and contributes to deep

loamy soils. Green ash (*Fraxinus pennsylvanicus*) is the dominant overstory species, with occasional Boxelder (*Ulmus rubra*). Common understory species include chokecherry (*Prunus virginiana*), as well as hawthorne (*Crataegus* species), current (*Ribes* species), Woods' rose (*Rosa woodsii*), silver buffaloberry (*Shepherdia argentea*), and western snowberry. The herbaceous layer is often dominated by sedges (*Carex* species) and grasses such as northern reedgrass (*Calamagrostis stricta*), western wheatgrass, bluebunch wheatgrass, and thickspike wheatgrass. Common forbs include American licorice (*Glycyrrhiza lepidota*), yarrow, meadow rue (*Thalictrum dasycarpum*), and bedstraw (*Galium* species). Exotics such as Russian olive (*Elaeagnus angustifolia*), yellow sweetclover (*Melilotus officinalis*) and Kentucky bluegrass occur in these systems. Shade and moisture draw livestock into woody draws and ravines, concentrating use, and causing mechanical damage to woody species. Browsing and trampling by livestock can limit the growth and recruitment of woody species. The grazing system described in Chapter 3 of this Management Plan will provide periods of growing-season rest, allow woody species to recruit out of the browse zone, and is designed to improve the long-term viability of woody draws on the Land.

Great Plains Riparian. Great Plains Riparian Systems comprise approximately 8% of the Horse Creek Complex are associated with Glendive, Eastman, Horse, Wolf, and Freeman Creeks, and their tributaries. The primary inputs of water to these systems overland flow from local precipitation and groundwater inflow (Decker, 2007)³. Flooding is the key ecosystem process, creating suitable sites for seed dispersal and seedling establishment, and controlling vegetation succession. Great Plains Riparian systems that occur on the Horse Creek Complex include riparian forests or woodlands, as well as shrublands, tallgrass or mixedgrass wet meadows, herbaceous wetlands, and gravel/sand flats. This system is found on alluvial soils in highly variable landscape settings, from confined, deep cut ravines to wide streambeds. Plains cottonwood (*Populus deltoides*) is common, especially along Glendive Creek. Other common woody species in riparian systems include willows (*Salix spp.*), redosier dogwood (*Cornus stolonifera*), western snowberry, chokecherry, and woods rose. In areas where the channel is incised, the understory may be dominated by Wyoming big sagebrush or silver sagebrush. Riparian areas can have a high herbaceous species richness, but are also prone to invasion by exotic grasses and forbs. Primary threats to floodplain systems include overgrazing and conversion to agriculture. The health of these systems may be heavily influenced by the condition of the surrounding landscape, because the quality and quantity of ground and surface water inputs into riparian areas depends on the quantity and health of vegetation in the uplands. The grazing system prescribed in Chapter 3 of this Management Plan will address these threats by preventing additional conversion, providing periods of rest from grazing to benefit riparian systems, and providing residual cover on a landscape scale which will slow erosion, improve moisture retention, and reduce sediment loads in overland flow.

Big Sagebrush Steppe. Big Sagebrush Steppe comprises approximately 1% of the Horse Creek Complex and occurs as small patches interspersed within badlands and mixedgrass prairie (Figure 2.2). The soils are typically deep and non-saline, often with a microphytic crust. These areas are dominated by Wyoming big sagebrush with western wheatgrass, with shrub canopy

³ Decker, Karin. 2007. *Western Great Plains riparian woodland and shrubland ecological system ecological integrity assessment*. Ft. Collins, Colo: Colorado State University, Colorado Natural Heritage Program.

cover ranging from 10-25% and herbaceous cover typically greater than 25%. Big Sagebrush Steppe, in conjunction with sagebrush on adjacent mixedgrass prairie sites, provides important habitat for a variety of sagebrush-associated wildlife species. Other shrub species present may include silver sagebrush, greasewood, saltbush, and rabbitbrush. Other grass and sedge species include Indian ricegrass, blue grama, Sandberg's bluegrass (*Poa secunda*), bluebunch wheatgrass, threadleaf sedge and needleleaf sedge (*Carex duriuscula*). Japanese brome and cheatgrass (*Bromus tectorum*), indicators of disturbance in this system, typically occur at low density on the Land. Common forbs include Hood's phlox (*Phlox hoodii*), prickly pear (*Opuntia* species), scarlet globemallow, purple prairie clover (*Dalea purpurea*), gayfeather (*Liatris punctata*), and milkvetch (*Astragalus* species).

Mat Saltbush Shrubland. Mat saltbush shrublands occur on clay or silt soils that are saline and alkaline, generally derived from marine shales, in gentle to rough topography. In total, this system occupies less than 0.3% of the Land. Shrub communities in this ecological system are comprised of primarily of Gardner's saltbush, but may also include species such as winterfat (*Krascheninnikovia lanata*), fourwing saltbush (*Atriplex canescens*), and occasionally Wyoming big sagebrush. The herbaceous layer is usually very sparse. Perennial forbs are infrequent but include species such as scarlet globemallow, annual species of saltbush, povertyweed (*Monolepis* species), goosefoot (*Chenopodium* species) and seepweed (*Suaeda* species). Grasses found on these sites include Indian ricegrass, blue grama, squirrel tail (*Elymus elymoides*), thickspike wheatgrass, western wheatgrass, Sandberg's bluegrass, and annual bromes.

Rocky Mountain Lower Montane-Foothill Shrubland. This shrubland system is rare on the greater landscape and the Horse Creek Complex, comprising less than 0.3% of the Land. Shrub species present may include chokecherry, American plum (*Prunus americana*), currant, skunkbush sumac, western snowberry, serviceberry, elderberry (*Sambucus spp.*), and Woods rose.

Great Plains Ponderosa Pine Woodland and Savanna. This ecological system occupies roughly 0.05% of the Land and may have been characterized by the historic presence of ponderosa pine. At the present time, no ponderosa pine occurs in these areas and species compositions are similar to Great Plains Mixedgrass Prairie.

Open Water and Emergent Marsh. Open water is represented by stock dams, most notably a roughly 10-acre stock dam on the southern portion of the Land. Emergent marshes are associated with approximately 20 small sites on the northern third of the Horse Creek Complex (including some that occur on leased public lands) where seeps, springs, or water-holding depressions occur in association with wooded draws and riparian areas.

Rocky Mountain Foothill Limber Pine – Juniper Woodland. This ecological system occupies less than 5 acres of the land and is characterized by patchy woodlots dominated Rocky Mountain juniper. Other shrub species may be present, and the herbaceous layer is generally sparse to moderately dense, with species compositions resembling the surrounding mixedgrass and sand prairies. Rocky Mountain juniper also occurs within the Great Plains Badlands ecological system and sporadically in other ecological systems on the Land.

3. GRAZING MANAGEMENT

3.1 Land Unit Description

The grazing system on the Horse Creek Complex encompasses a total of 20379.36 acres (15,376.36 deeded acres, 3,083 BLM, and 1,920 DNRC acres; Figure 2.1). The 15,376.36 deeded acres include 558.63 acres of Cultivated Areas and 327.11 acres of Seeded Areas (see Exhibit D in both Easements). These areas may be used for grazing as described in Sections II.C.17 of the ALE Conservation Easement, Section II.C.2 of the FWP Conservation Easement, and Chapter 4 of this Management Plan. The Easements also allow for up to three 10-acre Residential Development Areas. The remaining 14,460.62 acres are native rangelands described in detail in Chapter 2, the Grassland Component Description, of this Management Plan. The primary historic land use on the Horse Creek Complex has been livestock grazing. The grazing system described below follows cattle through winter, spring, summer, and fall and adheres to the ALE Grassland Component plan and Minimum Standards for Grazing (Exhibit C in both Easements).

3.2 Current Management Narrative

This section describes what has occurred with grazing management on the Horse Creek Complex prior to adoption of this grazing plan. Cows were split into three main groups:

- 1) **Mother Cows:** This was the main cow-calf herd, consisting of productive cows over 3 years old and their calves. The mother cows would generally winter on the Castle Butte, Meadows and Horse Creek pastures (Figure 3.1). Feeding would typically occur near hay stack yards in the Horse Creek Pasture. The mother cows would then move to the Railroad Pasture for the bulk of calving, which starts in mid-April. They would be moved to the Hideout or Oil Field Pasture in early May, the later calves would be born in these pastures. The mother cows would then move in south through summer and fall to the Glendive/Little Deep Creek, then Eastman, and finally the Four Section pastures. They would then be allowed to drift home through the Meadows, Castle Butte, and Horse Creek Pastures for shipping in mid-November. After weaning, the mother cows would be allowed to drift south to the winter pastures.
- 2) **Replacement Heifers.** These were kept in corrals at the home place from the time they were weaned through winter, then run as yearlings in the A-Frame and east portion of the Hideout Pasture. They then would be moved into the Railroad Pasture to winter as first-calf heifers.
- 3) **First-calf Heifers:** This group would winter in the Railroad Pasture, and be moved to the corrals for calving and then be moved to the Winter Field, where they would typically continue to be fed through May. They would then be moved to the Dugout Pasture, then Wolf Creek, through summer and fall. After weaning, they would spend the third winter

Pasture Names

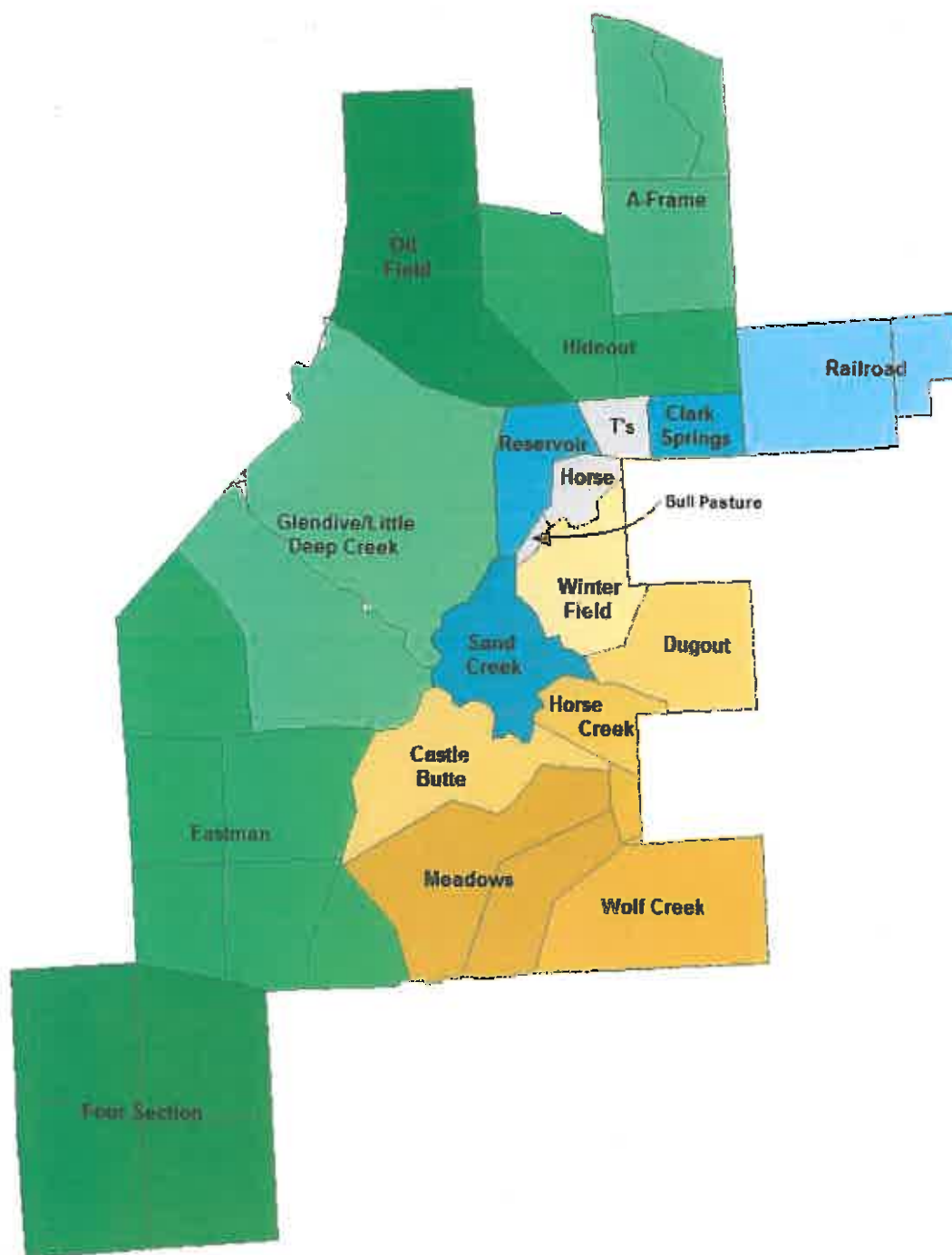


Figure 3.1: Map of the Horse Creek Complex, including names of pastures and pasture sets.

of their life in the Railroad Pasture, where they would calve the following spring as three year olds and join the Mother Cow group.

When not out with cows, bulls were kept either in the Sand Creek Pasture or contained to a smaller pasture, the Bull Pasture, with electric fence. Horses would be confined to corrals or the Horse Pasture.

3.3 Planned Management Narrative with tables and maps

Overview

The Horse Creek Complex is comprised of one contiguous parcel of land, currently consisting of several permanent pastures. Some of these pastures will be cross fenced and some additional watering sources will be installed to increase effectiveness of the rest rotation grazing practices that will be implemented on this ranch. There are 2 separate herds that are managed year-long on this ranch.

To keep within FWP grazing standards for summer grazing, 6 sets of pastures (3 pasture sets for each herd) will be developed accommodate each of the treatments prescribed in a 3-treatment rest rotation grazing system on an annual basis. In this case, a portion of the ranch would be available for an early treatment, or growing season grazing, a portion would be available for a late treatment, or post-seed ripe grazing, and the remaining portion of the summer pastures would receive the rest treatment, where no livestock grazing occurs during that calendar year.

To keep within FWP grazing standards for winter grazing, as many pastures as possible that are used during the late fall, winter, and early spring will receive alternating use, where some pastures are used during even years and rested during odd years, and other pastures are used during odd years and rested during even years.

There are some portions of the ranch that will not be grazed according to FWP grazing standards. These areas include some areas that would be considered as core areas on the ranch that are needed to conduct annual ranch operations, including but not limited to calving, weaning, shipping, and other animal husbandry practices. In addition, there are some areas of the ranch that include Cultivated or Seeded Areas that will be used to supplement livestock at various times of the year.

Figure 3.1 provides an overview of the Horse Creek Complex, and provides names assigned to individual pastures as well as to pasture sets used in the summer grazing system

Grazing Rotation and Schedules: Yearlings and Two-Year-Old's

Winter

For the purposes of this grazing plan, the two winter pastures will be used in alternating years. Each year, one of the two winter pastures is available for yearlings and two-year-olds (young cows) to use from mid-November until calving begins, starting on March 15, and the other winter pasture is rested. The Clark Spring Pasture will receive winter use in the even years (2020, 2022, 2024, etc.), and the Reservoir Pasture will receive winter use in the odd years (2021, 2023, 2025, etc.). The year is defined as of the start of the winter period (e.g., winter 2020 starts in November 2020 and ends March 15, 2021). Calves/pre-yearlings are wintered at the corral site at the Horse Pasture.

Spring

During the calving period, from March 15 until May 1, the young cows will move to the corral site at the Horse Pasture to calve, and the calves/pre-yearlings will move into the T's Pasture until they are turned out into the summer grazing system on May 1. Once the young cows have calved, they can use the Winter Fields until they are turned out into the summer grazing system on June 1.

Summer

During the summer, the young cows will be managed using a 3-treatment rest-rotation grazing system between the dates of approximately May 1 through approximately October 31. There are 3 pasture sets for this system that include the A-Frame, Hideout, and Oil Field Pasture sets. Note, because there are 2 pastures in each treatment, the yearlings and twos can either be grazed together as one herd, or they can be separated to run as separate herds if desired.

Each year, 1 pasture set is grazed during the growing season (Early), 1 pasture set is grazed after seed-ripe (Late), and one pasture set is rested yearlong (Rest). Within each pasture set, rotation between pastures is at the Landowner's discretion, meaning that all pastures within a set/grazing treatment could be grazed all at once, or the young cows could be rotated through each pasture within the pasture set as the Landowner sees fit, likely as each pasture gets utilized, then moving to the next, as long as the Early, Late, and Rest schedules are met.

Each year grazing rotation dates are: One pasture set available to graze from May 1 to August 15 (Early), 1 pasture set available to graze from August 1 to October 31 (Late), and 1 pasture set is rested from livestock grazing for the entire year (Rest). During the early grazing period, timing of entry into the system will typically be staggered. The heifer calves will enter the system as early as May 1, and the young cows (with their 1st calves) enter into the system on June 1. There is an intentional overlap between the end date of the early grazing (August 15) and the beginning date of the late grazing (August

1). This is to illustrate flexibility in the system to accommodate years when more forage is available.

Fall

On or around September 24, the yearlings are brought home to be pregnancy tested. Once tested, they can return to the pasture set that is being used during the late grazing treatment until October 31. At that time, they will go into the late fall pastures that are used in alternating years. Each year, one of the two late fall pastures is available for the young cows to use from November 1 until they go to their winter pasture on November 15, and the other late fall pasture is rested. In this case the Reservoir Pasture can be used during this time in even years (2020, 2022, 2024, etc.), and the Clark Springs pasture can be used during this time in the odd years (2021, 2023, 2025, etc.). On November 15, the yearlings will go to the winter pasture that was rested during the prior winter, and the weaned calves will go to the corral site at the home place.

Additional Details

- The grazing schedules and rotations are further described and illustrated on maps in Figures 3.2, 3.3, and 3.4 as well as on Tables 3.1 and 3.2.
- Because summer grazing uses a system that takes 3 years to complete 1 cycle (Early, Late, Rest) and because some spring, fall, and winter pastures are used in alternating years (Even Year Use, Odd Year Use), it will take a minimum of 6 years to complete a full cycle for the entire system.

Yearlings and Two-Year-Old's Year 1

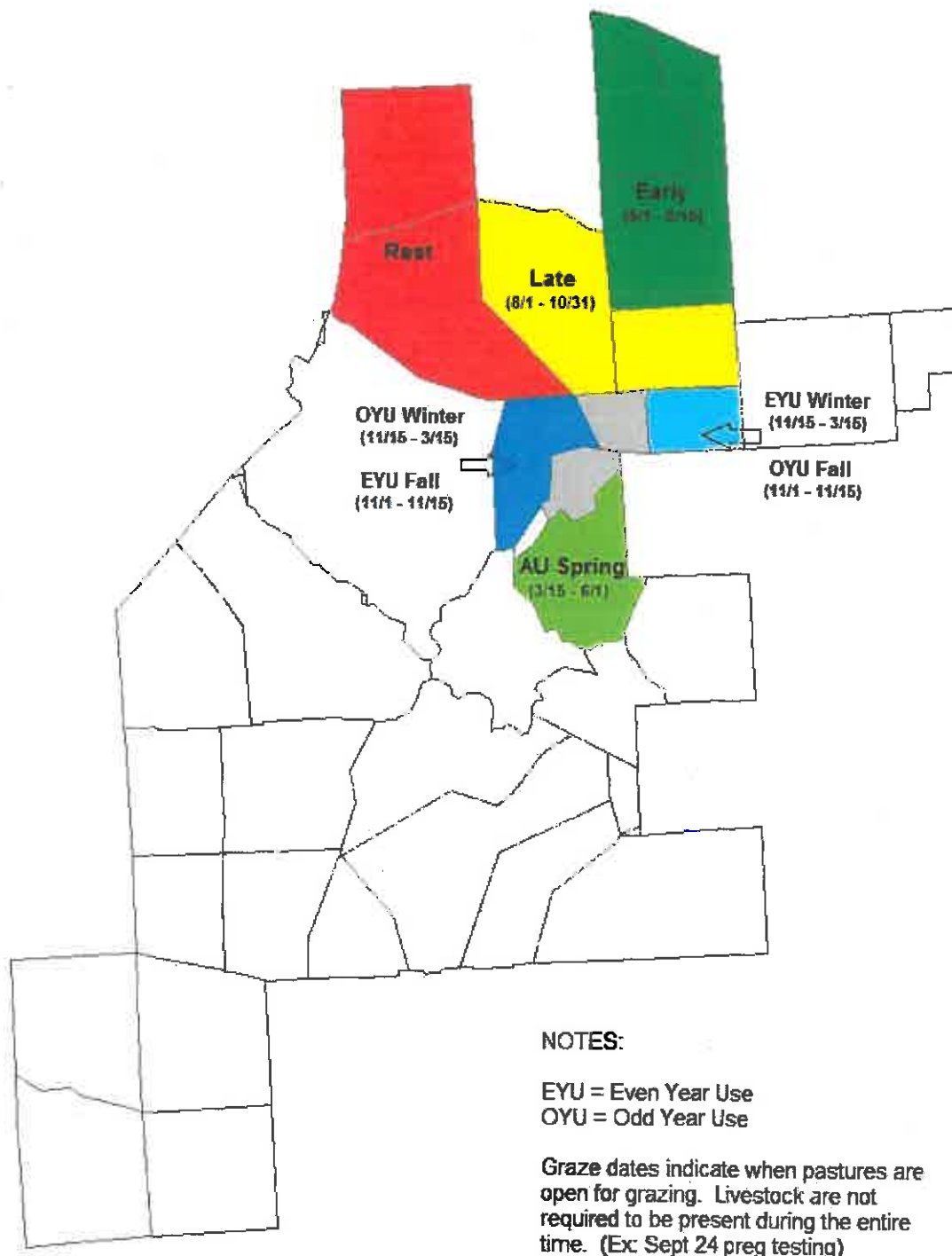


Figure 3.2: Map of grazing schedule for the yearlings and two-year-old's during Year 1.

Yearlings and Two-Year-Old's Year 2

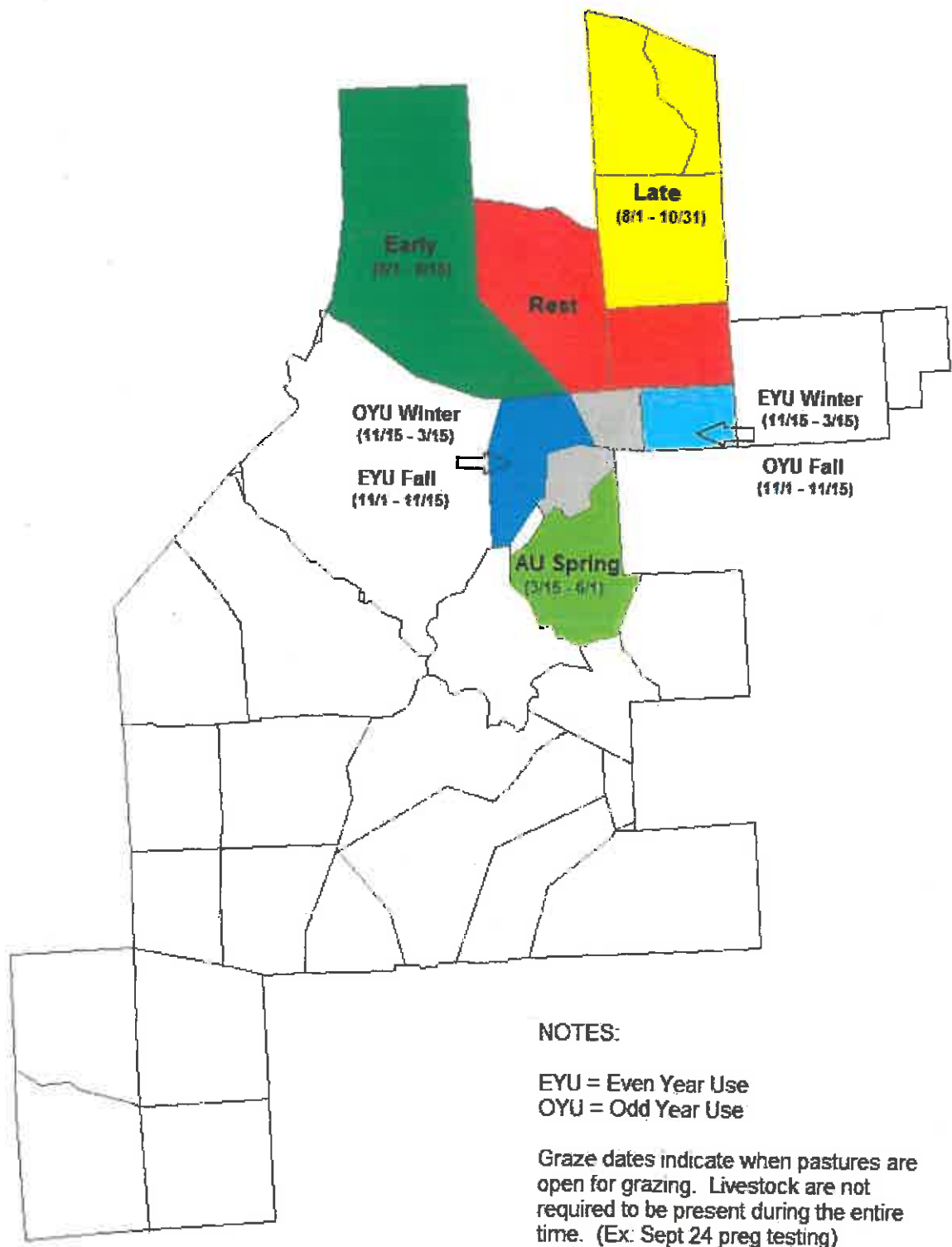


Figure 3.3: Map of grazing schedule for the yearlings and two-year-old's during Year 2.

Yearlings and Two-Year-Old's Year 3

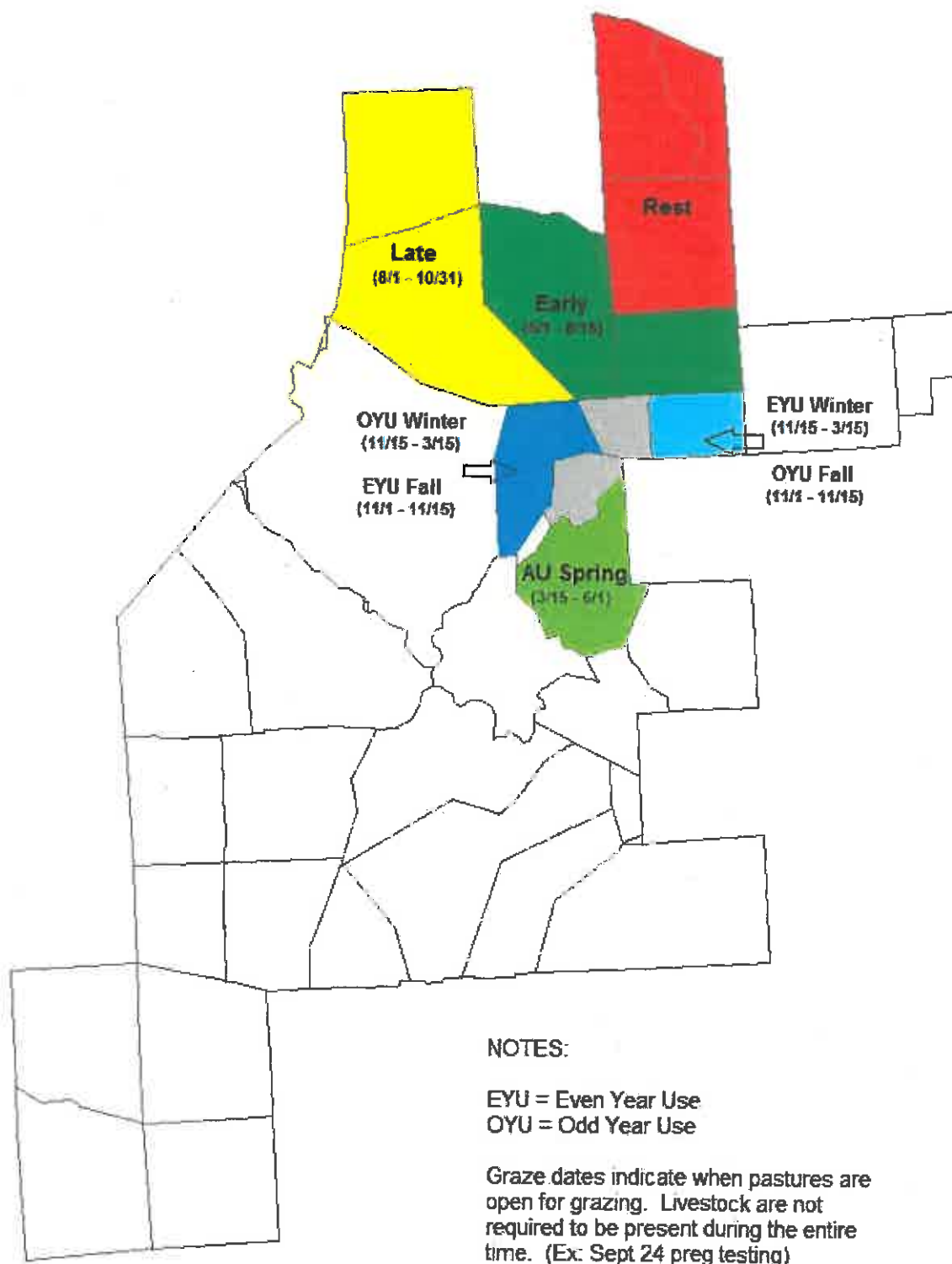


Figure 3.4: Map of grazing schedule for the yearlings and two-year-old's during Year 3.

Cow/Calf Grazing Rotation and Schedules

- Winter

Cows are wintered in the Railroad Pastures northeast of the home place from the onset of winter, usually by December 1, until calving begins on about March 15. Annual use of the Railroad Pasture will be allowed until additional wintering options can be realized. At that time, an alternating use grazing schedule between winter pastures will be implemented and reflected as an amendment to this grazing plan.

- Spring

During the spring, cows move from the winter pastures into the Horse Creek Pasture to calve. In addition to this calving pasture, cows can use 1 of 2 additional pastures that are available for alternating spring use. Castle Butte Pasture is available for concurrent use with Horse Creek pasture in even years (2020, 2022, 2024, etc.) and Wolf Creek Pasture is available for concurrent use with Horse Creek pasture in odd years (2021, 2013, 2025, etc.). These pastures are available from March 15 until May 1.

Once calving is completed, the cow/calf pairs move into the spring pastures from May 1 until May 30, or until branding is completed. These pastures include the Winter Fields, which is also open at the same time to yearlings that had their first calves, as well as the Meadows, which comprise planted fields designed specifically for providing good forage while providing the native pastures in the summer grazing system opportunity to grow.

- Summer

Once branding is completed, cow/calf pairs move to the summer grazing system. Throughout the summer until weaning in the fall, cow/calf pairs will be managed using a 3-treatment rest-rotation grazing system between the dates as early as May 30 (typically after branding has occurred) through approximately October 1, when the cow/calf pairs are taken home for weaning. The pastures that comprise the summer grazing system include Glendive/Little Deep Creek, Eastman, and Four Section pasture sets.

Each year, 1 pasture set is grazed during the growing season (Early), 1 pasture set is grazed after seed-ripe (Late), and one pasture set is rested yearlong (Rest). Within each pasture set, rotation between pastures is at the Landowner's discretion, meaning that all pastures within a set/grazing treatment could be grazed all at once, or cow/calf pairs could be rotated through each pasture within pasture sets as the Landowner sees fit, likely as each pasture gets utilized, then moving to the next, as long as the Early, Late, and Rest schedules are met.

Each year grazing rotation dates are: One pasture available to graze from May 30, or after branding, to August 15 (Early), 1 pasture available to graze from August 1 to October 1 (Late), or when the cow/calf pairs are brought home for weaning; and 1 pasture rested from livestock grazing for the entire year (Rest). This system also has an intentional overlap between the end date of the early grazing (August 15) and the beginning date of

the late grazing (August 1). This is to illustrate flexibility in the system to accommodate years when more forage is available.

Fall

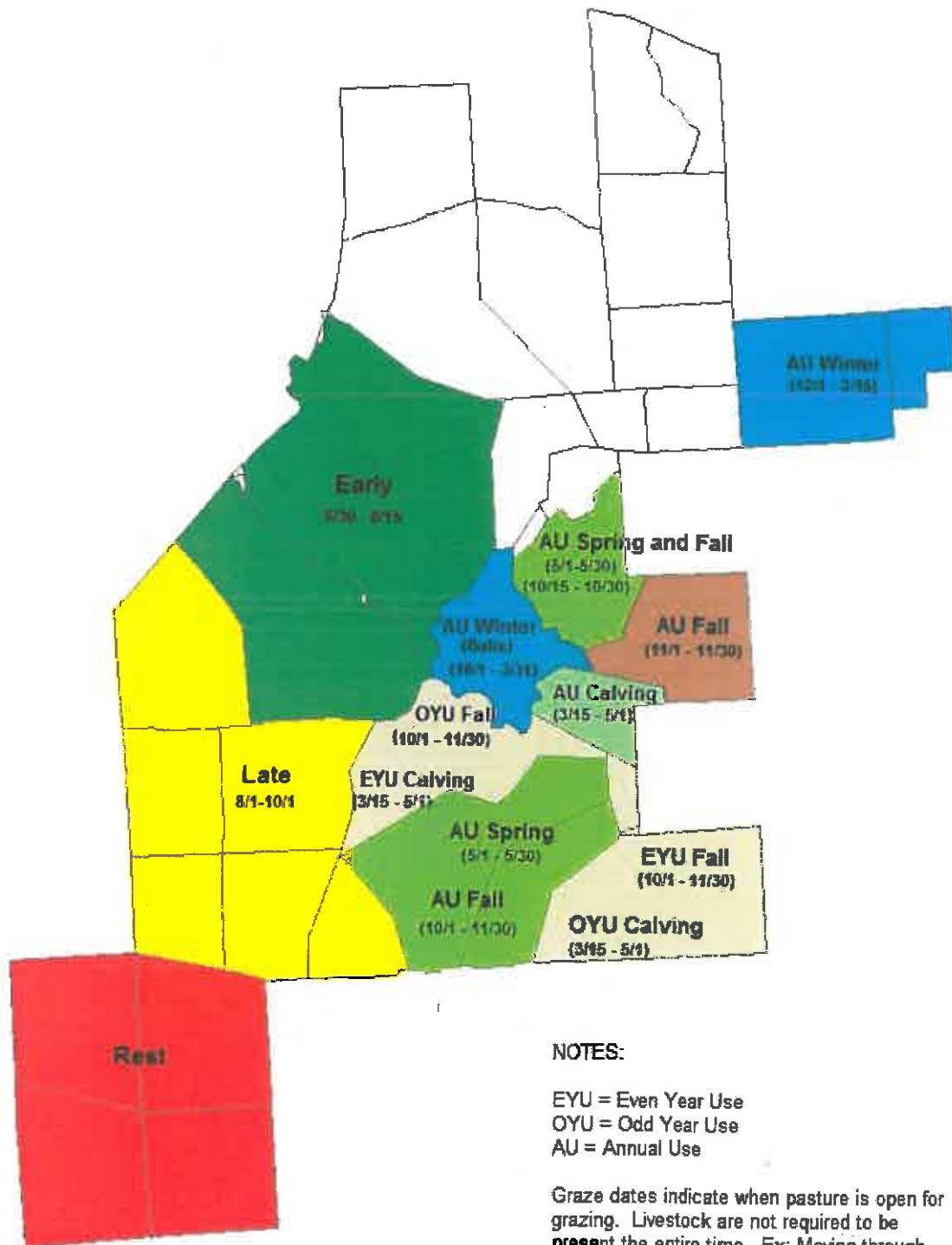
When the cow/calf pairs leave this system for weaning, they go to the late fall and winter grazing systems. Some pastures will be available for use by the cow/calf pairs as they work their way home for weaning during October. The primary purpose of these pastures during this time period is to serve as pass through pastures for cows and calves as they work their way home for weaning. While the Meadows and the Winter Fields will be open for cows and calves to pass through each year, Wolf Creek will be available during even years (2020, 2022, 2024, etc.) and Castle Butte will be available during odd years (2021, 2023, 2025, etc.).

After weaning, the cows move into Dugout Pasture that is available for late fall use only, from November 1 until the onset of winter, which is typically by December 1. During this time, cows can also work their way back into the pass through pastures that were available to them on their way home from the summer system if and when needed. At the onset of winter, typically by December 1, they move into the Railroad Pasture, located northeast of the home place, for the duration of the winter.

- Additional Details

- The grazing schedules and rotations are further described and illustrated on maps in Figures 3.5, 3.6, and 3.7 as well as on Tables 3.1 and 3.2.
- Because summer grazing uses a system that takes 3 years to complete 1 cycle (Early, Late, Rest) and because some spring, fall, and winter pastures are used in alternating years (Even Year Use, Odd Year Use), it will take a minimum of 6 years to complete a full cycle for the entire system.

Cow/Calf Year 1



NOTES:

EYU = Even Year Use
OYU = Odd Year Use
AU = Annual Use

Graze dates indicate when pasture is open for grazing. Livestock are not required to be present the entire time. Ex: Moving through pastures on their way home for weaning.

Figure 3.5: Map of the cow/calf grazing schedule for Year 1.

Cow/Calf Year 2

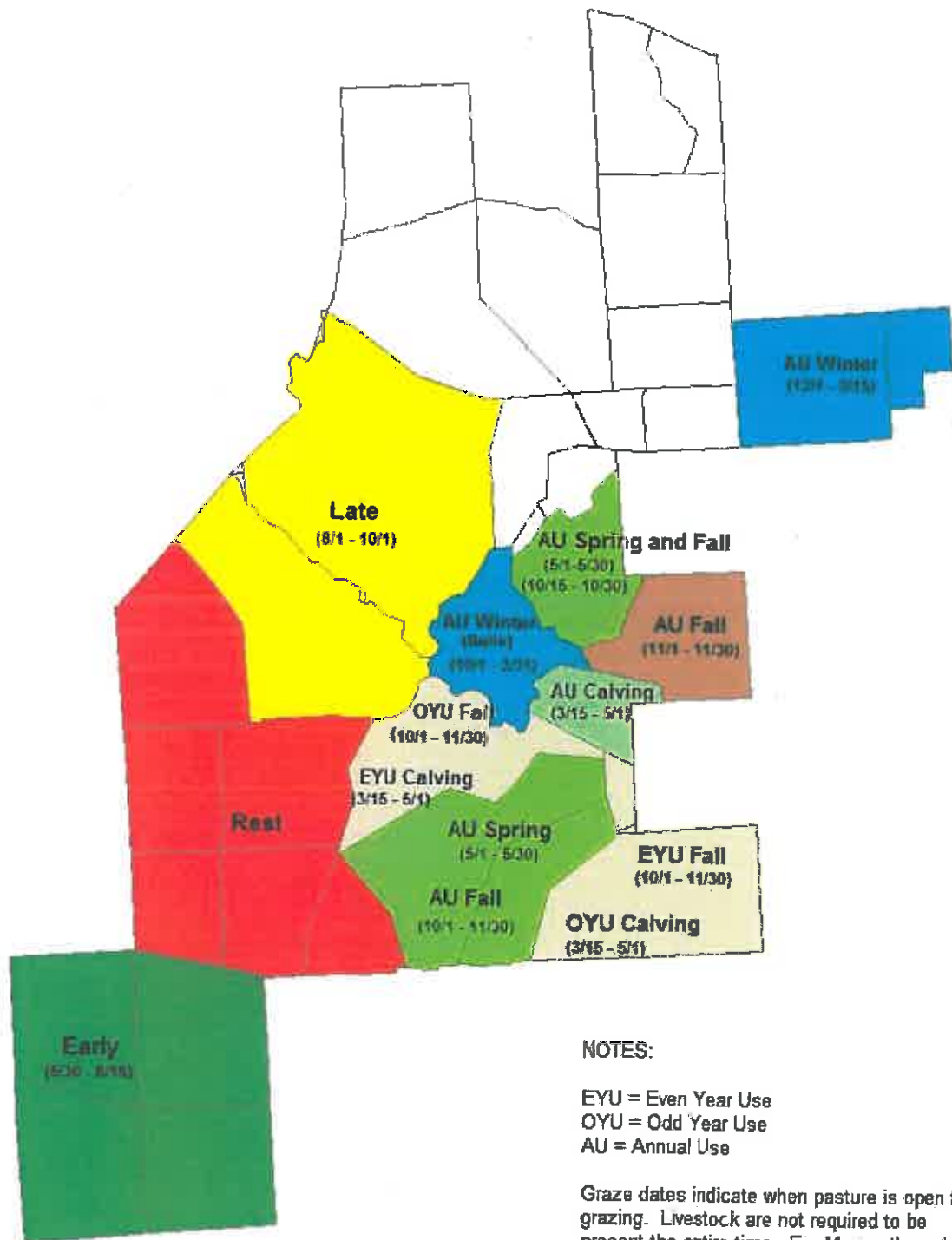


Figure 3.6: Map of the cow/calf grazing schedule for Year 2.

Cow/Calf Year 3

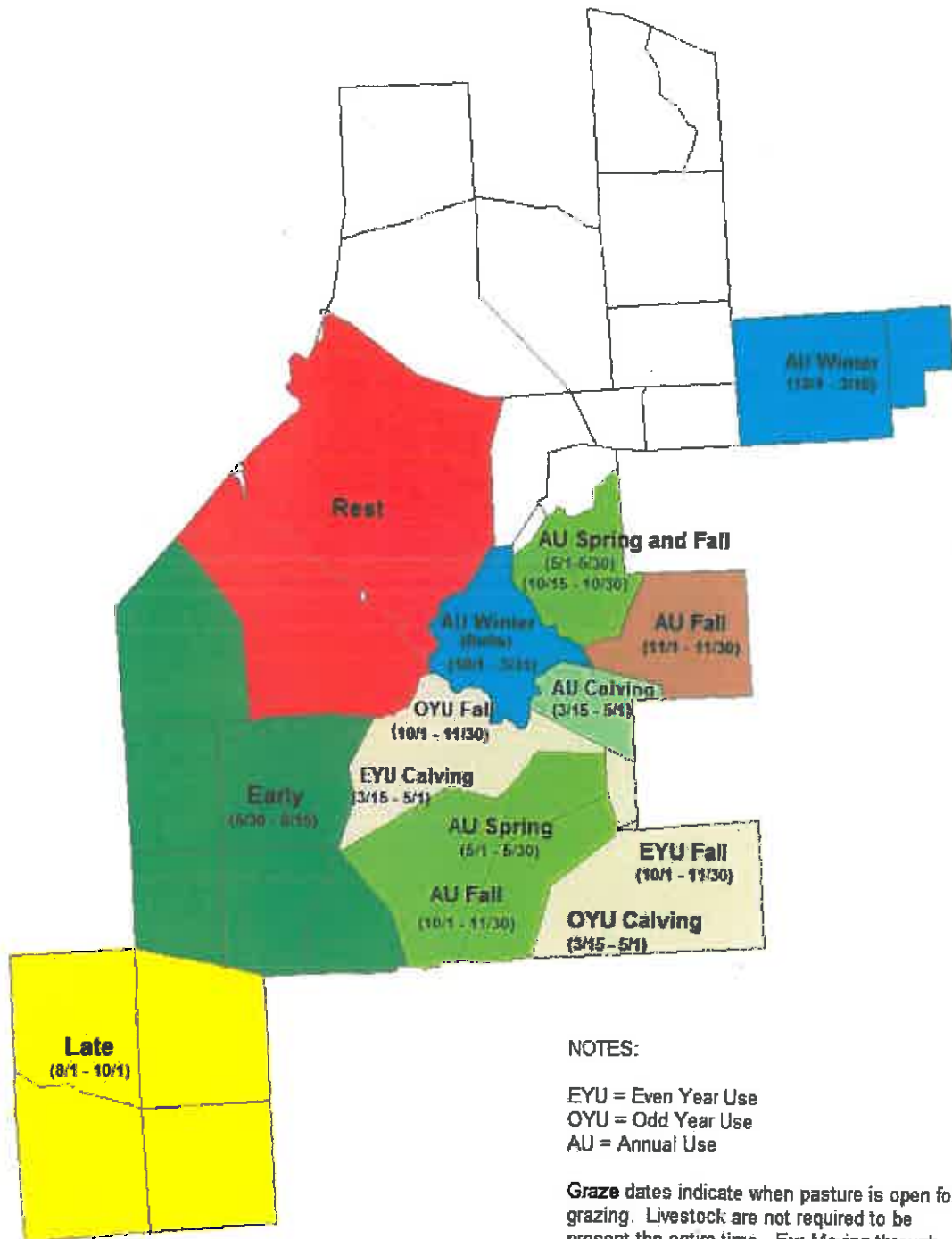


Figure 3.7: Map of the cow/calf grazing schedule for Year 3.

Table 3.1: Description of summer grazing schedules for cow/calf pairs and for yearlings and two-year-old's.

Horse Creek Complex Summer Grazing Schedules									
Cow/Calf Pairs Grazing System					Yearlings and Two-Year-Old's Grazing System				
Year	Glendive/Little Deep Creek Pasture Set	Eastman Pasture Set	Four Section Pasture Set		A-Frame Pasture Set	Hideout Pasture Set	Oil Field Pasture Set		
2020	Early	Late	Rest		Early	Late	Rest		
2021	Late	Rest	Early		Late	Rest	Early		
2022	Rest	Early	Late		Rest	Early	Late		
2023	Early	Late	Rest		Early	Late	Rest		
2024	Late	Rest	Early		Late	Rest	Early		
2025	Rest	Early	Late		Rest	Early	Late		
2026	Early	Late	Rest		Early	Late	Rest		
2027	Late	Rest	Early		Late	Rest	Early		
2028	Rest	Early	Late		Rest	Early	Late		
Early = Graze 5/30 - 8/15					Early = Graze 5/1 - 8/15				
Late = Graze 8/1 - 10/1					Late = Graze 8/1 - 10/31				
Rest = No grazing					Rest = No grazing				

Table 3.2: Description of fall, winter and spring grazing schedules for cow/calf pairs and for yearlings and two-year-old's.

Horse Creek Complex Spring, Fall, and Winter Grazing Schedules																
Year	Calving			Spring		Fall					Winter				Winter	
	Horse Creek	Wolf Creek	Castle Butte	Meadows	Winter Fields	Castle Butte	Wolf Creek	Meadows	Dugout	Field	Reservoir	Clark Springs	Railroad	Reservoir	Clark Springs	Sand Creek
2020	Yes	No	Yes	Yes ¹	Yes ⁽¹⁾⁽²⁾	No	Yes	Yes	Yes ³	Yes	Yes ⁴	No	Yes		Yes ⁵	Yes
2021	Yes	Yes	No	Yes ¹	Yes ⁽¹⁾⁽²⁾	Yes	No	Yes	Yes ³	Yes	No	Yes ⁴	Yes	Yes ⁵		Yes
2022	Yes	No	Yes	Yes ¹	Yes ⁽¹⁾⁽²⁾	No	Yes	Yes	Yes ³	Yes	Yes ⁴	No	Yes		Yes ⁵	Yes
2023	Yes	Yes	No	Yes ¹	Yes ⁽¹⁾⁽²⁾	Yes	No	Yes	Yes ³	Yes	No	Yes ⁴	Yes	Yes ⁵		Yes
2024	Yes	No	Yes	Yes ¹	Yes ⁽¹⁾⁽²⁾	No	Yes	Yes	Yes ³	Yes	Yes ⁴	No	Yes		Yes ⁵	Yes
2025	Yes	Yes	No	Yes ¹	Yes ⁽¹⁾⁽²⁾	Yes	No	Yes	Yes ³	Yes	No	Yes ⁴	Yes	Yes ⁵		Yes
2026	Yes	No	Yes	Yes ¹	Yes ⁽¹⁾⁽²⁾	No	Yes	Yes	Yes ³	Yes	Yes ⁴	No	Yes		Yes ⁵	Yes
2027	Yes	Yes	No	Yes ¹	Yes ⁽¹⁾⁽²⁾	Yes	No	Yes	Yes ³	Yes	No	Yes ⁴	Yes	Yes ⁵		Yes
2028	Yes	No	Yes	Yes ¹	Yes ⁽¹⁾⁽²⁾	No	Yes	Yes	Yes ³	Yes	Yes ⁴	No	Yes		Yes ⁵	Yes
Yes = Graze 3/15 - 5/1																
Yes = Graze 10/1 - 11/30 (pass through and late fall if needed)																
Yes ¹ = Cow/calf pairs graze 5/1 - 5/30																
Yes ² = Heifer calves & Yearlings graze 3/15 - 6/1																
Yes ³ = Graze 11/1 - 11/30																
Yes ⁴ = Graze 11/1 - 11/15																
Yes ⁵ = Graze 12/1 - 3/15																
Yes ⁵ = Graze 11/15 - 3/15																
Yes = Graze Bulls 10/1 - 3/31																

3.4 Stocking Rate

This grazing plan does not set a specific stocking rate. On deeded lands covered by the CE, the maximum stocking rate will be based on compliance with the grazing system. As long as the Landowner can graze livestock and remain in compliance with the grazing system, FWP will not be concerned about the stocking rate. If pasture forage consistently runs out before the scheduled timing is complete, there would likely be too many livestock. Conversely, if excess pasture forage remains after use, there would likely be room to pasture additional livestock.

3.5 Salt and Mineral Management

When salt and mineral supplements are used, they will be located away from riparian and wetland zones in a manner that will minimize impacts to these areas. Sites will also be located away from any known grouse breeding leks.

3.6 Range Improvements

In order for the grazing system to operate, the range improvements described in the table below are essential. Grazing system improvement needs are summarized in Table 3.3 and mapped in Figure 3.8. Landowner/FWP cost share will involve two options: Option 1, FWP pays for materials through reimbursement to the Landowner and the Landowner completes the installation as in-kind cost share. Option 2, the Landowner hires contracted services and all work is split 50/50 through reimbursement to the Landowner. The total cost of range improvements is expected to be \$206,755. Reimbursement paid by FWP will not exceed \$103,378.

The Landowner and FWP will incorporate a cost-share agreement as part of the CE Purchase Agreement for the improvements identified in Table 3.3. As improvements are completed, FWP will reimburse the Landowner based on original or copies of original receipts for materials and services upon FWP inspection of completed work.

Unless unforeseen circumstances prevent completion, improvements described in Table 3.3 should be completed within 3 years (Year 2021) from the signing of the CE. At that time, the grazing systems should be fully operational. In the meantime, during the infrastructure construction years that would include the grazing seasons of 2018, 2019, and 2020, the grazing systems will be followed when and wherever possible as improvements are completed. However, full compliance with the grazing schedules will not be required during this construction period.

Horse Creek Complex Infrastructure Improvements

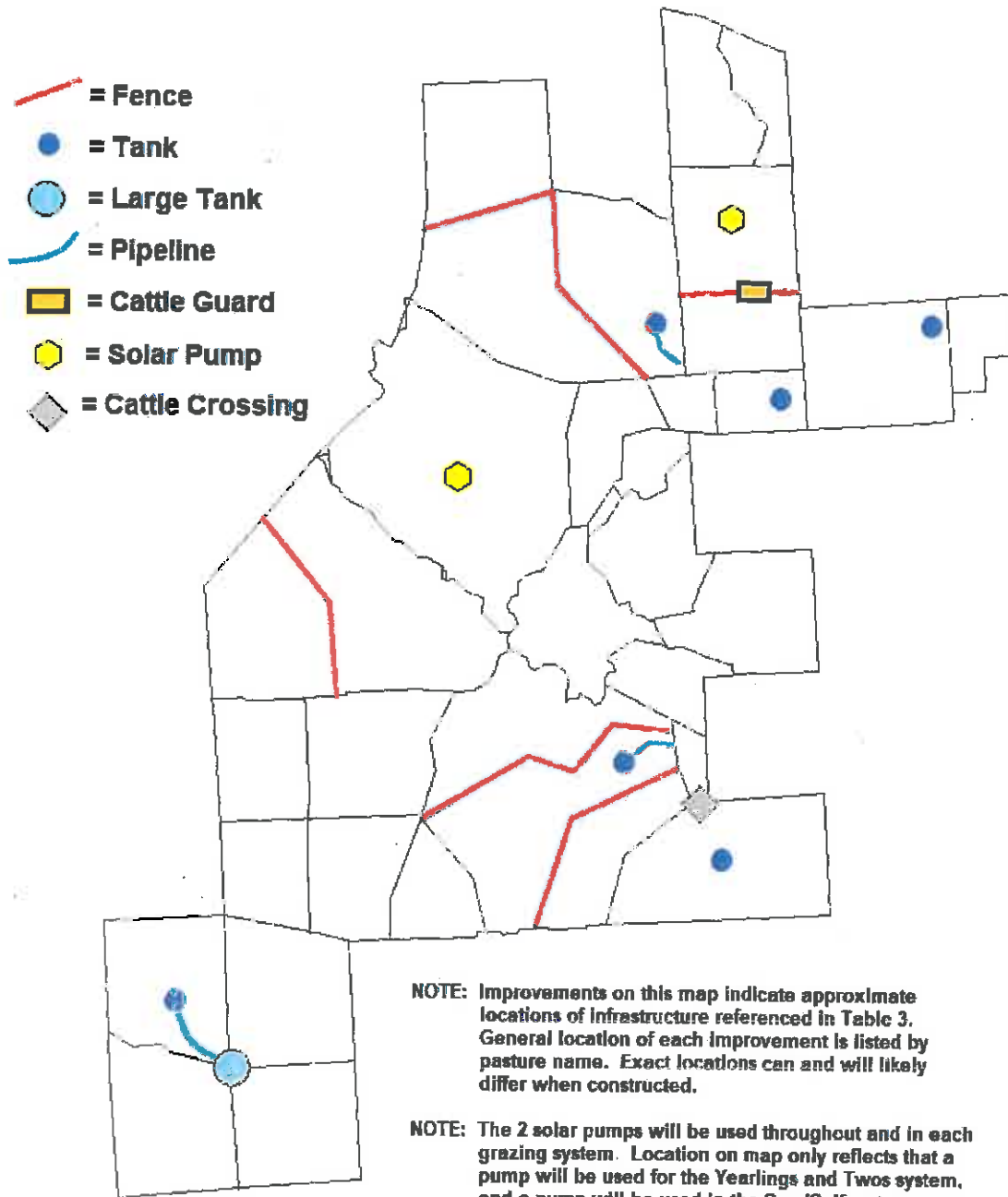


Figure 3.8. Map of improvements needed for grazing system development on the Horse Creek Complex Project.

Table 3.3: Improvements needed for grazing system development on the Horse Creek Complex Project.

Horse Creek Complex Infrastructure Estimates					
Improvement	Pasture	Pasture ID	Rate	Quantity	Cost
380 Pasture Fence	Oilfield	2478	\$2.52	5280	\$13,306
380 Pasture Fence	Hideout	2478	\$2.52	9504	\$23,950
	Glendive/Little				
380 Pasture Fence	Deep Creek	1997	\$2.52	7920	\$19,958
380 Pasture Fence	A-Frame	731	\$2.52	5280	\$13,306
380 Pasture Fence	Meadows	2606	\$2.52	10870	\$27,392
380 Pasture Fence	Meadows	2606	\$2.52	9710	\$24,469
614 Winter tank - 1,000 gallon	Railroad	1006	\$4.46	1000	\$4,460
614 Winter tank - 1,000 gallon	Hideout	241	\$4.46	1000	\$4,460
614 Water tank - 1,000 gallon	Four Section	695	\$2.66	1000	\$2,660
614 Winter tank - 1,000 gallon	Clark Springs	241	\$4.46	1000	\$4,460
614 Winter tank - 1,000 gallon	Meadows	2606	\$4.46	1000	\$4,460
614 Winter tank - 1,000 gallon	Wolf Creek	1012	\$4.46	1000	\$4,460
516 Pipeline - Below Frost PVC, HDPE, IPS, PE	Meadows	2606	\$2.50	2540	\$6,600
516 Pipeline - Below Frost PVC, HDPE, IPS, PE	Hideout	241	\$2.50	1320	\$3,300
516 Pipeline - Below Frost PVC, HDPE, IPS, PE	Four Section	695	\$2.50	2640	\$6,600
533 - Solar Pump	Cow/Calf grazing system		\$9,056.88	1	\$9,057
533 - Solar Pump	Yearling grazing system		\$9,056.88	1	\$9,057
Cattle Guard with Delivery and Installation	Hideout	731	\$4,200.00	1	\$4,200
614 Storage Tank - 10,000 gallon	Four Section	695	\$1.50	10000	\$15,000
Cattle Creek Crossing - Installed	Wolf Creek	1012	\$5,600.00	1	\$5,600
			TOTAL		\$206,755
			50% Cost Share		\$103,378

3.7 How the grazing plan addresses Fish and Wildlife Objectives

The overall objective of this grazing system is to maintain and enhance the quality and vigor of native vegetation on lands incorporated into the Easements. Periods of rest offered by the grazing system are intended to improve species diversity, forage quality and palatability. Pastures incorporated into summer grazing systems follow a three-pasture rest-rotation grazing system which provides season-long and year-long rest from grazing for two consecutive growing seasons via deferred (post seed-ripe) and year-long rest treatments, respectively. These periods of rest allow plants to replenish energy reserves and restore vigor lost through grazing during the growing season. When livestock are permitted into the "late summer" pasture following seed-ripe, hoof action tramples mature seeds into the soil, and can provide microsites that capture moisture and facilitate seedling establishment. The following year's rest treatment allows these seedlings to develop strong root systems and grow before growing-season livestock grazing commences again the following spring. This rest-rotation approach improves the health of perennial species by allowing them to recover following grazing, but also promotes species diversity by allowing annuals an opportunity to reproduce during periods of growing season rest. The abundance and health of highly palatable "ice cream" plants is improved

relative to grazing regimes that do not incorporate regular growing season rest, because the more palatable plants are the first to be grazed by livestock, thereby reducing their vigor and survival, and giving less palatable species a competitive advantage. Pastures incorporated into winter grazing systems will be afforded year-long rest on alternate years, and complete growing season rest, providing similar advantages for plant vigor and species diversity as those pastures in the summer system.

The grazing system will help ensure an adequate quantity and quality of forage is available for a wildlife using upland and riparian habitats. For example, high quality, early spring forage will be available for wild ungulates the spring following the post seed-ripe treatment. These rested pastures can be critical for antelope and deer coming out of a negative energy balance from winter, as they get ready to fawn. Residual vegetation provides valuable cover for ground nesting and ground brooding birds, including Sage and Sharp-tailed Grouse, as well as cover for small mammals, fawning cover for ungulates, and hiding cover for a variety of wildlife. Critical food items such as seeds and insects also tend to be more abundant in these rested pastures. Grazing systems can contribute to songbird diversity because different species of songbird prefer different vegetation structures and heights offered by the various grazing treatments. Woody draws throughout eastern Montana are in decline, oftentimes due to grazing regimes that do not offer sufficient rest and allow woody species to reproduce or grow above the browse line. Rest provided by the grazing system will improve recruitment and growth of woody species that provide critical nutrition in the form of browse and mast production, as well as hiding and thermal cover for a variety of wildlife.

In addition to benefits to native vegetation and wildlife, the grazing system can contribute to overall ecosystem health and water quality. Residual cover can reduce runoff and erosion, thereby contributing to moisture retention, water quality, and soil health. Improved plant species diversity leads to improved health and diversity of pollinator and native insect populations. Finally, the grazing system will contribute to high-quality hunting, trapping, and wildlife watching experiences for the public. The grazing system contributes to productive rangelands, healthy ecosystems, and robust wildlife populations, all of which have both intrinsic and aesthetic value. Finally, the grazing system will serve as an example of how livestock production and conservation are highly compatible, because the quality and quantity of vegetation for livestock production should be maintained or improved long-term under the grazing system.

This grazing plan was developed during the summer and fall of 2017 through a cooperative effort by the following:
Kip and Adele Stenson, Landowners
Kelvin Johnson, wildlife habitat biologist
Melissa Foster, wildlife management biologist

4. MANAGEMENT OF CULTIVATED AND SEEDED AREAS

Objective: *Allow the Landowner to manage Cultivated and Seeded Areas (described in section II.C.17 of the ALE Easement, II.C.2 of the FWP Easement, and Exhibit D of both Easements) to benefit the livestock operation, without degrading habitat in adjacent portions of the Land.*

Strategy: To sustain a financially viable agricultural operation, the Landowner shall have flexibility within Cultivated and Seeded Areas to plant any crop of their choosing, including native or tame grass, cover crops, forage mixes, or traditional crops. As part of a normal agricultural operation, the Landowner may utilize generally-accepted agricultural practices, such as chemical fallow or other practices, on an as-needed basis. Per the terms of the Easements, within a given year Cultivated Areas may be cropped, hayed, grazed, used for grassland restoration or conservation, or any combination of these activities, whereas Seeded Areas may not be cultivated and must be used for grazing or grassland restoration or conservation. The planting of invasive non-native plants that would have the potential to degrade habitat in surrounding lands is prohibited.

5. WEED MANAGEMENT

Objective: *Prevent noxious weeds from degrading the conservation and agricultural values of the Land.*

Strategy: The Landowner is responsible for managing noxious weeds in compliance with State law and best management practices, implementing an integrated pest management philosophy to meet weed control goals. Control may include a combination of chemical, mechanical and biological controls as appropriate to meet conservation goals.

6. WILDLIFE FRIENDLY FENCES

Objective: *Section II.C.8.b. of the ALE Easement and Section II.C.9.b of the FWP Easement (Landowner's Rights – Man-made Structures) states that "Any new or renovated fence or other barrier that would significantly impact wildlife habitat or wildlife movement or migration on or through the Land must be "wildlife friendly" as provided in the Management Plan." For the purposes of this management plan, the term "wildlife friendly" does not refer to a specific fence design but rather a broader objective of providing for wildlife passage without inhibiting the ability of the fence to contain livestock.*

Strategy: Designs for wildlife friendly fences are constantly evolving with new research and testing of new designs. Paige 2012⁴ provides a good overview of current wildlife friendly

⁴ Paige, C. 2012. A Landowner's Guide to Wildlife Friendly Fences. Second Edition. Private Land Technical Assistance Program, Montana Fish, Wildlife & Parks, Helena, MT. 56 pp

designs. With prior notice to FWP, when a fence is proposed to be constructed or replaced, the Landowner and FWP wildlife biologist will jointly design a fence that takes into account the wildlife species present, habitat, and landscape features. The FWP wildlife biologist can provide input on the proposed fence route and may be able to suggest modifications that would benefit wildlife (for example, re-routing a fence that would pass near or through a grouse lek) with little impact to the overall length of fence, difficulty of fencing, or resulting pasture sizes. The design may specify wire spacing (to allow passage over and under fences and minimize entanglement), or markers to improve visibility. Oftentimes it is not necessary for the entire fence to allow ideal passage. Fence modifications at specific crossing spots likely to be heavily traveled by wildlife may provide excellent wildlife passage (Paige 2012¹). The default design will be a fence of not more than 4 strands of barbed wire with the height of the top wire set at 42 inches or lower and the height of the lowest wire set 18 inches from the ground or higher. Due to the nature of fencing on uneven ground, there may be places where the top wire is higher or bottom wire is lower than specifications, this is expected so long as the majority of the fence conforms to height requirements.

Fence requirements in the Easements apply only to internal fences and those external fences that the Landowner is responsible for maintaining. It does not obligate adjacent landowners to wildlife friendly fence designs. In cases where the default fence design is inadequate to exclude livestock belonging to adjacent landowners, it may be necessary to modify this standard to adequately exclude those livestock. In this case, provisions such as seasonal lay-downs or other fence modifications may be utilized to improve wildlife passage.

Internal gates except those along public roadways will be left open whenever they are not needed to contain livestock. For internal gates along public roadways, FWP may provide seasonal gates (to be used when livestock are not present in the pasture) that would prevent vehicular trespass but allow excellent wildlife passage (e.g., cable/padlock gates). External gates will be left open whenever possible and agreeable to adjacent landowners.

7. NON-CATTLE DOMESTIC LIVESTOCK

Objective: *Section II.C.1 (Landowner's Rights – Livestock Grazing) of each Conservation Easement provides for "The right to raise, pasture and graze livestock, and the right to lease pasture to another agricultural operator to raise, pasture, and graze livestock," and later states "For the purposes of this Easement, livestock is defined as cattle; provided, however, that other species of grazing animal may be substituted for cattle with Prior Approval." It would be burdensome for both parties if the Landowner were required to ask permission from FWP each time they desired to purchase a new non-cattle animal. The objective of this chapter is to allow the Landowner flexibility to keep non-cattle livestock.*

Strategy: This management plan grants Prior Approval for the Landowner to keep up to 25 non-cattle livestock (such as riding horses, livestock for food or fiber, 4-H projects, guardian animals, companion animals, pack animals, show animals), provided that the animals do not pose a risk to

resident wildlife from disease or other factors. The grazing of these animals must conform to the grazing plan in Chapter 3.

At the time of this management plan, there is a known risk of disease transfer from domestic sheep and goats to wild bighorn sheep. Bighorn sheep, on rare occasions, may pass through the Land. If the Landowner would like to keep domestic sheep and/or goats in the future, they must obtain prior approval from FWP and jointly develop a plan that seeks to minimize the risk of commingling and disease transmission, taking into account both domestic sheep and goats and bighorn sheep numbers and distribution on the greater landscape at that time. If at some future time there are robust bighorn sheep populations in the area and very few domestic sheep and goats, FWP may require significant measures to minimize disease risk. However, only minimal precautions are warranted if bighorn sheep are rare such that the risk of commingling is low (this is the current situation) or if domestic sheep or goats become common on neighboring properties such that providing separation on the Land would be insufficient to prevent commingling on the larger landscape.

8. PUBLIC ACCESS

Objective: *Utilize public hunting for the dual purpose of providing public hunting opportunity and managing game populations on the Land.*

Strategy: At the time this management plan was put into effect, the Land provided year-round habitat and season-long hunting opportunity for mule deer, white-tailed deer, pronghorn, and sharp-tailed grouse. Pheasants, wild turkeys, and Hungarian Partridge occur on portions of the property, and the Land supports a small number of sage-grouse and occasional elk. The game species present and the abundance of those species may change through time due to changing distributions of wildlife in the region, variable weather conditions, and changing habitat conditions on the Land and the broader landscape. The Landowner will provide hunter access for all legal species and sex of game animals for the duration of all Fish and Wildlife Commission-approved seasons. If both the Landowner and FWP determine that hunting limitations are warranted for a certain species and/or sex of game animal, and FWP provides the Landowner with written documentation, then the Landowner may limit the species and/or sex of game taken on the Land. The Landowner will never be required to limit hunting for any species/sex of game animal because general season hunting is the primary tool to prevent game damage problems. Wild game populations fluctuate over time and may exceed FWP or Landowner management objectives. If public hunting during normal commission-approved hunting seasons is insufficient to prevent game damage issues, additional game damage assistance and prescribed hunts may be provided on an “as needed” basis, upon agreement of both FWP and the Landowner.

Objective: *Minimize the potential for conflict between public access and ranching operations, and between public access and wildlife management goals.*

Strategy: Per Sections 1.F. and II.B.5 of each Easement, the Landowner will be required to provide public recreational access for hunting and wildlife watching. The Easements require that the Landowner provide a minimum 600 hunter days annually if demand exists. The amount of public access for wildlife watching will be at the discretion of the Landowner. The Landowner is not required to allow other recreational activities in conjunction with or separate from hunting or wildlife watching. Examples of such activities include, but are not limited to the following: rock climbing, bicycling, kite-flying, camping, drone flying, video filming, frisbee throwing, horse riding or packing, collection of fossils and artifacts. The Landowner or FWP may prohibit wildlife watching activities that interfere with ranching operations or wildlife management goals. This includes any activities that have the potential to decrease habitat or forage quality or quantity and those that have the potential to disturb livestock or wildlife. If a conflict arises between wildlife watching opportunity and public hunting opportunity, the public hunting opportunity will take precedence. Dogs used for legal hunting will be allowed on the Land and must be under control at all times. The use of dogs on the Land for any purpose other than legal hunting is at the discretion of the Landowner. In times when the U.S. Drought Monitor (<http://droughtmonitor.unl.edu/>) indicates D3-D4 drought on a scale from D0 (Abnormally Dry) to D4 (Exceptional Drought), the Landowner may close the Land to public access due to fire danger. In times where drought is less severe but fire danger is great, or for other legitimate reasons, the Landowner may temporarily close all or a portion of the Land to public access with prior written approval from FWP.

Objective: *Provide the public a reasonable, efficient, and effective method to gain access to the Land for hunting and wildlife watching, while simultaneously allowing the Landowner to put reasonable limits in place to minimize the burden of allowing public access, provide for public safety, and minimize crowding.*

Strategy: The Landowner can manage permission for the public to access the Land using one of four options: unlimited walk-in access with no permission required, sign-in boxes, permission administered from the Landowner (in person, via telephone, text, social media, or email), or permission administered by FWP personnel. If permission is administered by FWP the Landowner may, at their discretion, allow family, friends, and other members of the public to access the Land for hunting, wildlife watching, or any other reason. Such access may be in addition to, but may not exclude those members of the public that were granted reservations or permission by FWP.

The Landowner may, but is not required to:

- Manage the number of individuals and/or parties on the Land at any given time to provide for public safety and minimize crowding. The Landowner must allow a minimum of three parties or 12 individuals on the Land at any given time until the minimum number of hunter days are met. Immediate family members and employees do not count toward these minimums.
- Divide the ranch into two or three subunits and assign individuals or parties a subunit to prevent crowding.
- Require hunters and wildlife watchers to sign in and collect pertinent information to identify them such as: name, ALS number, telephone, address, vehicle license plate number.

- Require hunters and wildlife watchers to check in and check out.
- Limit the hours that the wildlife watchers can access the Land. Hunters must be allowed on the Land two hours before and two hours after legal shooting hours to accommodate prime hunting hours. Hunters in the act of tracking or retrieving harvested big game will not be subject to these limitations.
- Specify certain days or times of day which they will be available to provide permission and/or communicate with the public, provided that such limitations are reasonable.
- Limit public access to walk-in only from designated parking areas shown in Figure 8.1.
- Prohibit the use of wheeled motorized and non-motorized vehicles on the Land. However, the use of game carts by hunters to retrieve downed game must be allowed.
- Additional rules may include the following:
 - Do not park vehicles in such a manner as to obstruct traffic or block any gate.
 - Watch for livestock and leave all gates as you find them.
 - No smoking. No fires. No open flame. Be careful about fire hazards.
 - No littering. Pack everything out that you bring in with you.
 - Maintain ¼ mile distance from livestock at all times.
 - No access is allowed in pastures where cows, heifers, or calves are present during calving, winter (after 12/1 annually), or for the following pastures in the fall: Horse, T's, Dugout, Clark Springs, and Winter Field (for pasture locations, see Figure 3.1).
 - No removal of fossils, artifacts, or shed antlers.
 - No overnight camping
- Provide more leniency than the ranch rules on a case-by-case basis. For example, they may allow elderly or handicapped hunters to hunt out of a UTV, or may allow motorized game retrieval from a trail, or allow camping for a specific party that asks permission.

To ensure that the spirit of the public access requirements provided for in the Easements are being upheld, FWP may:

- Place signs delineating Conservation Easement boundaries and/or rules.
- Require that the Landowner document hunter days provided.
- Manage public hunting access on the Land if the Landowner fails to provide public access as specified in the Easements and this Management Plan.

9. NUISANCE WILDLIFE AND TRAPPING

Objective: *Allow the Landowner to manage nuisance wildlife species.*

Strategy: The Landowner will not be required to limit the take of unregulated wildlife species, provided the take of such animals complies with all applicable laws. At the present time unregulated species include coyotes, badgers, skunks, raccoons, foxes, and rodents (including

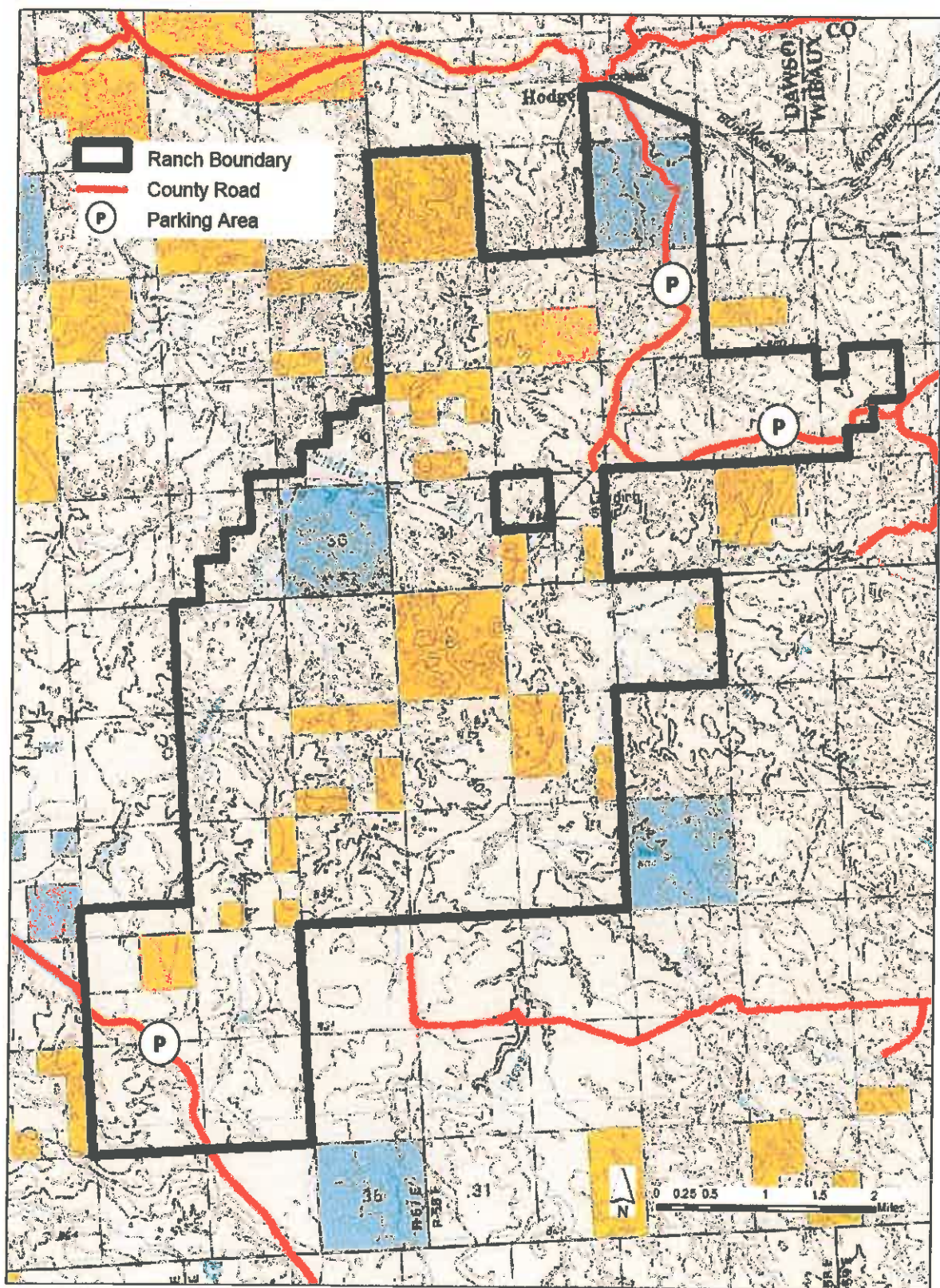


Figure 8.1. Designated Parking Areas.

prairie dogs), among others. The Landowner may limit hunting of these species to one or a few members of the public.

The Landowner must allow a minimum of one member of the public to trap on the Land during established trapping seasons. They may select the individual that is allowed to trap on the Land, and may retain that individual for as long as they wish. They may require a minimum setback up to 100 yards from roads and trails, and 1 mile from homes, buildings and corrals. They may prohibit trapping in pastures with livestock. They may require notification when the individual(s) will be on the Land, of trap locations, and animals caught. The trapper(s) may be required to follow the same access rules as other members of the public described in Chapter 8 of this Management Plan.

10. WASTE DISPOSAL

Objective: *Allow the Landowner to dispose of personal household rubbish and other non-toxic materials per section II.D.15 (Waste Disposal) of each Conservation Easement.*

Strategy: The Easements allow for a single landfill for personal use by the Landowner. The location of this landfill may be within seeded areas described in the northern Seeded Area shown in Exhibit D in both of the Easements. The total footprint of this landfill shall not exceed 10,000 square feet at any given time. When establishing a landfill, the Landowner shall segregate and store the top 18 inches of topsoil, or all available topsoil, whichever is applicable to the site, for reclamation purposes. The landfill pit may remain open for an unlimited amount of time. If the Landowner chooses to move the location of the landfill within the Seeded Area, or to retire a portion of the landfill to allow for expansion, the Landowner shall be responsible for reclamation of the retired landfill site, including fill dirt, replacement of topsoil, control of noxious weeds and replanting the site as provided in Chapter 4 (Management of Cultivated and Seeded Areas) of this management plan. The Landowner will surround the landfill pit with standard livestock panels to discourage wildlife from entering and minimize the risk of wildlife entanglement.

11. MONITORING

Annual monitoring will be completed on all Conservation Easement lands. This assessment shall be conducted by MFWP or a designated third party and will involve meeting with the Landowner and completing field reviews to assess Management Plan effectiveness and to review Landowner compliance with the terms of each Conservation Easement. The Landowner is encouraged to thoroughly familiarize themselves with the Management Plan including the grazing system schedule, the terms in the Deeds of Conservation Easement, and to contact FWP with any questions or concerns in order to avoid non-compliance.

Final Management Plan Approved By:

Richard Kip Stenson, Springhill Ranch

Date

Mary Adele Stenson, Springhill Ranch

Date

John Ensign, FWP Region 7 Wildlife Manager

Date

Brad Schmitz, FWP Region 7 Supervisor

Date

Ken McDonald, FWP Wildlife Division Administrator

Date